MEMO TO FILE

Balcones Resources, Inc.
9301 Johnny Morris Rd
Austin, Texas 78724-1523

July 1, 2019

City of Austin, Purchasing Office
Attn: Cynthia Gonzales
Acting Deputy Purchasing Officer
P.O. Box 1088
Austin, TX 78767

Re: Balcones Resources, Inc.

Ladies and Gentlemen:

The purpose of this letter is to memorialize our meeting on June 10 and June 11, 2019 in Austin among Austin officials, myself, Kerry R. Getter of Balcones, and Ron Gonen and Michael Gajewski of Closed Loop Partners, LLC. As we informed you at the meeting, it is expected that Balcones will enter into a transaction this summer wherein an affiliate of Closed Loop will acquire 80% of the ownership interests of Balcones; existing stockholders of Balcones will continue to own 20% of its ownership interests. No portion of the purchase price will be funded with additional debt of Balcones. Following the closing of the transaction, I will remain as the President and Chief Executive Officer of Balcones.

At your earliest convenience, please return to me a countersigned copy of this letter, acknowledging receipt of this notice and that you have no objection to the transactions described above, including that the creditworthiness of Balcones will not be materially or adversely affected by such transactions, that the services to be provided by Balcones, or its ability to perform the services, under our agreement with the City of Austin, will not be materially or adversely affected, and that Closed Loop does not have a history of poor operations.

Very truly yours,

Kerry R. Getter
President and Chief Executive Officer

cc: City Law Department
PO Box 1088
Austin, TX 78767

ACKNOWLEDGED AND AGREED:

City of Austin

By: _____
Name: Richard McHale
Title: Interim Director

9301 Johnny Morris Road
Austin, Texas 78724
Phone: 512.472.3355
Fax: 512.472.6203
www.balconesresources.com

BALCONES RESOURCES
Naturally Inspired Thinking

BALCONES RESOURCES, INC.
EXHIBIT A
AMENDED AND RESTATED SERVICE SCHEDULE
SFR RECYCLABLE MATERIALS PROCESSING
(Description of Scope of Services and Relevant Terms)

Section 1. Summary of Terms:

(a) Execution Date of this Service Schedule: April 27, 2011; as Restated and Amended, April 30, 2016.

(b) Percentage of Total Collected Material Awarded: 60%

(c) Minimum Monthly Collected Material Amount: 2,000 short tons

(d) Location of Designated Facility: Balcones Facility on Johnny Morris Road

(e) Location of Storage Facility: Balcones Facility on Johnny Morris Road

(f) Location of Backup Facility: to be designated by Vendor

(g) Second Reset Date: May 1, 2021

(h) Future Reset Dates: October 1, 2025 (Third Reset Date), and every fifth (5^{th}) anniversary thereafter

(i) Processing Fee Rate per ton delivered until Second Reset Date: See Attachment 1

(j) Percent of Index earned by the City until Second Reset Date: *See* Attachment 1

(k) Transferred Employees for SFR Recycling Services: None

(l) Managed Contracts or Assigned Contracts: None. Schedule 9 of the Master Agreement is not applicable to this Service Schedule.

(m) Most Favored Nation provision in Schedule 6.1, Article II of the Master Agreement is not applicable to this Service Schedule.

Section 2. Definitions:

All non-grammatical capitalized terms not defined in this Service Schedule shall have the meaning given such term in the Master Outsourcing Agreement dated April 27, 2011 by and between Vendor and City (the "***Master Agreement***"). In addition to the terms defined in the Master Agreement, the following terms are used in this Service Schedule:

"***Award Percent***" shall mean until the Second Reset Date, the Percentage of Total Collected Material shown in Section 1(b). At each Reset Date, unless this Service Schedule has expired or

been terminated in accordance with its terms, or the Master Agreement has expired or been terminated in accordance with its terms, the Award Percent shall apply until the earlier of (i) the next Reset Date, or (ii) the expiration or termination of this Service Schedule.

"***Backup Facility***" means an off-site single-stream MRF that the operator of which will have agreed to process the Collected Materials to substantially the same specifications and with the same limitations as Vendor has agreed to herein, should the Designated Facility ever be unable to process the Collected Materials timely in accordance with the standards set forth herein.

"***Business Continuity Plan***" has the meaning set forward in Section 3(b).

"***Collected Material***" means (i) the material deposited in carts designated by the City to be used solely for the collection of Recyclable Materials at single family residences and collected by the City or its Designated Collection Contractor and delivered to Vendor, and (ii) material deposited by commercial operators in 96 gallon or smaller carts designated by the City to be used solely for the collection of Recyclable Materials by the City or its Designated Collection Contractor using substantially the same equipment deployed for making collections from single family residents ("***Smaller Business Accounts***") and delivered to Vendor. The parties acknowledge that Collected Material may include Recyclable Material, Residual Material, and Trash.

"***Collection Vehicles***" means the vehicles owned and operated by the City or a Designated Collection Contractor used to collect the Collected Material at curb-side of single family residences and from Smaller Business Accounts.

"***Composition Study***" means a semi-annual study performed by Vendor at the Designated Facility based upon a reasonable sampling of Collected Materials (the "***Sample***") and conducted in accordance with good industry practice. The Composition Study will be conducted on a weekend day by processing the Sample through Vendor's MRF, and measuring the quantities of Recyclable Material, Residual Matter, and Trash extracted from the Sample. The Composition Study shall occur semi-annually, first during the period between April 1st and May 31st and second during the period between October 1st and November 30th.

"***Deliverable Credit***" means the credits that shall be payable by the Vendor to the City in the event the Vendor fails to deliver any of the Deliverables listed in Section 9 within the time period specified.

"***Designated Facility***" has the meaning given such term in Section 3(a).

"***Designated Collection Contractor***" means any person or entity which the City has identified to Vendor as being an agent or contractor of the City for the purpose of collecting or transporting Recyclable Material from single family residences and Smaller Business Accounts.

"***Disposal***" has the meaning assigned to such term in the Master Agreement.

"***Master Contractor***" means the City when it has contracted with an Other Municipality for the City or its Designated Collection Contractor to conduct curbside or transfer station pickup of Recyclable Materials which are then delivered to Vendor (by agreement between the parties) for SFR Processing Services.

"***Minimum Award Amount***" means the amount of Collected Material that the City agrees to deliver to the Designated Facility (calculated as a monthly average over any rolling twelve (12) calendar month period after the Cutover Date). Until the Second Reset Date, the Minimum Award Amount is equal to the amount shown in Section 1(c). If the Award Percent established by the City for Vendor as of any Reset Date is less than twenty-five percent (25%) of the Collected Material from and after that Reset Date, then Vendor may, upon thirty (30) days' written notice to the City, elect to terminate this Service Schedule, provided Vendor delivers such written notice within thirty (30) days after the City has established such Award Percent.

"***MRF***" means a materials recycling facility able to efficiently receive, store, process, and make ready for sale, Recyclable Materials.

"***Other Municipality***" shall mean any political subdivision of the State of Texas situated in Travis or surrounding counties for whom the City serves as a Master Contractor.

"***Processing Fee***" means, subject to the annual true-up process set forth in Section 5(f) of this Service Schedule, the charge to be assessed by Vendor as the fee for receiving, storing, sorting, disposing and marketing all Collected Material delivered to Vendor at its Designated Facility, Storage Facility and Backup Facility (without duplication) and is calculated on a monthly basis by multiplying the rate shown in Section 1(i) of this Services Schedule (or such future rate as is effective as of a Reset Date) times the tons of Collected Material delivered to Vendor during such month.

"***Recyclable Material***" shall, until the Second Reset Date, have the meaning given to such term in the Master Agreement, plus any materials added by agreement prior to the First Reset Date. From time to time, it may also include such other classes of materials that the parties jointly determine there exists a commercially reasonable market for recycled items in such class, and there exists an index or other reasonable national measurement of the economic value of such recyclable item.

"***Residual Materials***" means non-recyclable waste and any other materials that are rendered non-recyclable due to residual contamination as well as Fines. The amount of Residual Material shall be based upon the weight of the Residual Materials measured prior to any Disposal. Until the parties agree on, or the Benchmarking Process shall establish, other measurement systems, use of the then-current materials composition ratios to the total volume of Collected Material delivered to Vendor by the City shall constitute measurement. For purposes of this Service Schedule, Trash is not a Residual Material and is defined separately.

"***Reuse***" is using a product or item in its original form more than once. Reuse is about extracting the highest value possible from used items - preserving and even enhancing the integrity of materials through imagination, creativity and intelligence.

"***Revenue Percent***" shall, until the Second Reset Date, have the value assigned to such term in ATTACHMENT 1, and shall generally be the percentage of the Value of Recyclable Material earned by the City each month based upon the total weight of each class of Recyclable Material delivered by the City to Vendor for SFR Processing Services for the month in question as shown

on ATTACHMENT 1. ATTACHMENT 1 is made an integral part of this Service Schedule and fully incorporated by reference.

"***Revenue Share Payment***" has the meaning given such term in Section 5(d).

"***Schedule Date***" means the date set forth in Section 1(a) of this Service Schedule.

"***SFR Processing Services***" means the receipt, storage, sorting and processing of Collected Material and the bundling and making ready for resale, and storing of inventory for resale Recyclable Material delivered by the City or its Designated Collection Contractor to Vendor which was collected in a single-stream process from single family residences and Smaller Business Accounts within the City

"***Slide Schedule***" means the collection operation by recycling crews when a holiday is observed on a weekday.

"***Smaller Business Accounts***" means a commercial operation that is a customer of the City that uses 96 gallon or smaller carts for solid waste collections services.

"***Storage Facility***" means the storage facility location as shown in Section 1(e), or such other location designated to the City in writing at least thirty (30) days prior to any use of such new facility by Vendor for the provision of the SFR Processing Services.

"***TCEQ***" means the Texas Commission on Environmental Quality, an agency of the State of Texas.

"***TDA***" means the Texas Department of Agriculture.

"***Total Collected Material***" means for each month after the first Reset Date the amount of Collected Material picked up by the City or its Designated Collection Contractor from single family residences or Smaller Business Accounts located within the city limits of the City.

"***Trailer***" means a walking floor or tipper transfer trailer.

"***Trash***" means for purposes of this Service Schedule, matter or material contained in the Collected Material that is not Recyclable Material under this Service Schedule, but is nonetheless deposited in collection carts by single family residential customers or Smaller Business Accounts. For purposes of this Service Schedule, Trash is not a Residual Material.

"***Value of Recyclable Material***" means the dollar amount determined on a month-by-month basis by multiplying the weight of a particular class of Recyclable Material (as shown in ATTACHMENT 1, as such table may be modified from time to time on a Reset Date, or by the addition of additional classes or Recyclable Materials) extracted from the Collected Material during the month in question, times the index set forth in ATTACHMENT 1 opposite such class of Recyclable Material, or another value as may be determined by the parties in accordance with Section 5 of this Service Schedule.

Section 3. General Conditions:

(a) Operation of MRF. Vendor shall operate a MRF located at the address set forth in Section 1(d) (the "***Designated Facility***") for the purpose of accepting, sorting and processing Collected Material, and the storing and marketing of Recyclable Material collected by the City of Austin or any Designated Collection Contractor. Except as otherwise may be agreed in writing between City and Vendor, Vendor shall accept, sort, process, store and ship solely from the Designated Facility. The location of the Storage Facility is at the address set forth in Section 1(e) and may include another location designated to the City in writing at least thirty (30) days prior to any use of such new facility by Vendor for the provision of the SFR Processing Services.

(b) Business Continuity Plan. Vendor shall be solely responsible for any additional costs to transfer the Collected Material to the Backup Facility, in the event that Vendor is unable to store the Collected Materials at its Designated Facility in accordance with the requirements of the Master Agreement until Vendor is able to perform the Services with respect to such Collected Material at its Designated Facility. Vendor shall periodically review and update its business continuity plans as it determines is necessary to ensure uninterrupted Services to the City (the "***Business Continuity Plan***"), and shall notify the City whenever such update has occurred, and shall permit a representative of the City to review the updated plans at Vendor's offices during regular business hours upon forty-eight (48) hours prior notice, or in the event of any SFR Processing Services disruption lasting longer than two (2) days, then within eight (8) hours of notice from the City. The Business Continuity Plan shall be designed to reasonably mitigate any reasonably foreseeable acts of Force Majeure including those that would be reasonably foreseeable to an experienced operator of a MRF located in the Southwestern United States that could be subject to the weather events and extremes as occur from time to time in Central Texas.

(c) Permits; Inspections. Vendor shall (i) at all times have valid and up-to-date local and state permits, and shall allow the City designated representative access to view and make copies of such permits during regular business hours upon forty-eight (48) hours' notice, (ii) notify the City designated representative within twenty-four (24) hours of any OSHA inspection or violation, and (iii) permit the City designated representative access to conduct a safety inspection on a semi-annual basis, in conjunction with the Composition Study, of the areas accessed by City employees at the Designated Facility, the Backup Facility, any storage facility identified in Section 1(e), if applicable, and any other facility accessed by City employees and used by Vendor in the performance of the Master Agreement. Any safety inspection shall be performed in accordance with the Safety Checklist, set forth in ATTACHMENT 2. ATTACHMENT 2 is made an integral part of this Service Schedule and is fully incorporated by reference. In addition to the semi-annual safety inspection, if at any time City reasonably determines that a condition of the Designated Facility creates an imminent danger to the health, safety, or welfare of an employee of City or an employee of Designated Collection Contractor, City may cease delivery of Collected Material to Vendor without penalty of any kind until an inspection by City is allowed and concludes that the condition creating the imminent danger is no longer present, provided the City promptly conducts its investigation and concludes its inspection not later than two business days after the Vendor makes the Designated Facility available for the City's inspection.

Section 4. Process:

(a) The City or its Designated Collection Contractor collects the Collected Material from its residents and Smaller Business Accounts in a single stream method using trucks on regular routes for curb-side pickup from the carts designated for Recyclable Materials that have previously been distributed to single family residences and Smaller Business Accounts in the City. The material placed in the carts is selected by the residents of the City or Smaller Business Accounts and the collection personnel for the City undertake no quality assurance tests or pre-sorting of such material. As a consequence, a portion of the Collected Material placed in such carts, collected by the City and to be delivered to the MRF will contain trash, or will have a certain amount of impurities and contamination attached to or intermingled with such Recyclable Material. Title to all Collected Material shall pass to Vendor when tipped from the Collection Vehicles or Trailers onto the tipping floor at any facility under the care, custody or control of the Vendor (including any Storage Facility, Designated Facility or Backup Facility). Vendor's MRF shall be designed to reasonably identify and to remove any Residual Material from the stream of Recyclable Material. If no higher and best use is commercially available for the Residual Material, as reasonably determined by the Vendor, then a Disposal of the Residual Material shall occur; provided that any Disposal at a landfill or other disposal facility shall only be at a landfill or other disposal facility approved by and operating under a current and effective MSWLF permit issued by the TCEQ.

(b) When a load of Collected Material delivered to Vendor is composed of more than fifty percent (50%) by weight of Trash, as estimated by Vendor in good faith, the Vendor will immediately notify the City and will isolate the load through the end of the next business day for inspection by City and Vendor personnel. If the City verifies that the load is composed of more than fifty percent (50%) by weight of Trash, the load will be considered contaminated and will remain in the custody of the Vendor for processing the Recyclable Material or Disposal by

Vendor. Despite the determination that a load is contaminated, if Vendor processes the Recyclable Material contained within the contaminated load, no Revenue Share Payment will be due to the City for the contaminated load. If Vendor choses to dispose of the contaminated load, including any Recyclable Material included within the contaminated load, City agrees to reimburse Vendor for Vendor's costs to dispose of the contaminated load. In either Event, City will pay Vendor the Processing Fee set in Section 1(i) for the contaminated load.

(c) The City or its Designated Collection Contractor shall deliver the Collected Material to the Designated Facility either (a) in the Collection Vehicles, or (b) aggregated at another location owned or operated by the City (or a contractor selected solely by the City) and transferred into Trailers and delivered to the Designated Facility in such Trailers. In either case, Vendor shall operate its Designated Facility so that all delivery vehicles used by or for the benefit of the City shall be able to travel from publicly-maintained streets or thoroughfares to the tipping floor of the Designated Facility over all-weather drives with suitable base (underpavement) and top concrete or asphalt pavement with a rated capacity that would permit the delivery of at least ten thousand (10,000) tons per month of Collected Material (plus the weight of the delivery vehicles) across such drives without significant deterioration with normal maintenance routines.

(d) Vendor solely is responsible for the conditions within the Designated Facility and any Storage Facility and shall maintain such facilities in a manner to permit the timely and efficient delivery by City vehicles to the Designated Facility and the sorting, processing, and storage of all Recyclable Material. In addition, Vendor shall ensure that at least one safety spotter is provided during regular business hours at the Designated Facility or any Backup Facility while in use by or for Vendor for SFR Processing Services. The tipping floor and all Collected Material, until all sorting and processing is completed, shall be in an all-weather, covered facility designed to ensure that no such material is degraded by any forces of weather. If it becomes necessary to for Vendor to store Recyclable Material outside, then Vendor shall store all such Recyclable Material in appropriate conditions for each category of Recyclable Materials so that no appreciable amount of degradation of the Recyclable Material shall occur due to weather.

(e) Hours of Operation:

(i) The City or its Designated Collection Contractor should be able to make deliveries to the Designated Facility and tip all Collected Material at the MRF every weekday (Monday through Friday, except for the holidays listed in subsection (ii), below, in which event, the following Saturday), between the hours of 6:30 am and 7:00 pm.

(ii) The holidays identified below are observed by City recycling collection crews when the holiday falls on a weekday. When a holiday is observed on a weekday, recycling crews will conduct collection operations on a Slide Schedule.

Holiday	**Date Observed**
New Year's Day	January 1

Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

(iii) If due to a weather related event the City's collection schedule is interrupted such that the City or its Designated Collection Contractor is required to collect and then tip Collected Material at the Designated Facility on a Saturday (other than a Saturday following an observed holiday in Section 4(e)(ii) above) or a Sunday, Vendor may charge the City an additional $20.00 per ton for every ton tipped at the Designated Facility during that time.

Section 5. Fees and Revenue:

(a) Compliance with Federal and State Competition Laws: Vendor recognizes that the City may allocate less than 100% of the Collected Material to Vendor for SFR Processing Services, and that there may exist a designated competitor providing to the City essentially the same or similar services. The parties have also agreed that from and after the Second Reset Date, the Benchmarking Process may be used, but only after the failure of good faith negotiations, to establish price and revenue with respect to the SFR Processing Services. The parties hereby agree that they intend that the pricing and revenue shall be established strictly in accordance with federal and state fair competition and anti-trust laws, to the extent applicable to the SFR Processing Services and the parties. As a result, the City may mandate a change in the procedures set forth in this Service Schedule, including this Section 5, to the extent that the City shall ever determine that the application of the procedures set forth herein would result in a violation of fair competition or anti-trust law. In such event, the parties, or a court of competent jurisdiction in the event the parties are unable to agree, shall amend this Service Schedule to comply with such laws, but only to the minimum extent necessary to ensure compliance with such laws, and in a manner designed to most preserve the intended economic bargain of the parties, including the scope of the SFR Processing Services the City is to receive hereunder.

(b) Processing Fee:

(i) The Processing Fee shall be charged per short ton (2,000 pounds) of Collected Material actually delivered during the month in question by the City or its Designated Collection Contractor to Vendor's Designated Facility, or its storage facility or Backup Facility (without duplication), in the event that the Designated Facility is not available at the time of such delivery.

(ii) Subject to the annual true-up process set forth in Section 5(f) of this Service Schedule, Vendor shall be entitled to charge the Processing Fee for the performance of all SFR Processing Services at the rate shown in Section 1(i) until the Second Reset Date.

(iii) At each Reset Date, the Processing Fee rate shall be re-established based upon the agreement of the parties, or if the parties cannot agree, then through the Benchmarking Process. The parties agree that for the purposes of avoiding any anti-competitive price signaling to any designated competitor, and subject to the requirements of state law, including the Texas Public Information Act (Tex. Gov. Code, Chapter 552), neither the City nor Vendor shall make public, prior to the finalization of any change in the Processing Fee rate at a Reset Date, the amount of the proposed Processing Fee, but the City may take such new Processing Fee rate (whether determined by negotiation or through the Benchmarking Process) into consideration when determining, as of a Reset Date, the Award Percent for Vendor that will be applicable from such Reset Date, forward. Subject to the mutual agreement of the parties, such Processing Fee shall be the only fee, charge, expense or cost to be paid by the City for all Services provided by Vendor with respect to SFR Processing Services.

(iv) For the avoidance of doubt, Vendor shall be compensated for the sorting, processing and disposal of all Residuals solely through the Processing Fee charged on Collected Material delivered by the City or its Designated Collection Contractor to Vendor, with no additional disposal fees charged to the City.

(c) Determination of Recyclable Material Quantity: Daily, Vendor shall provide each Collection Vehicle driver upon his or her exit of the Designated Facility a copy of the weight ticket for that Collection Vehicle's delivery of Collected Material delivered for SFR Processing Services. The amount of Recyclable Material shall be determined as follows:

(i) The parties shall rely on a Composition Study. Each Composition Study shall be based upon a reasonable sampling of Collected Materials delivered by the City and any of its Designated Collection Contractors conducted in accordance with good industry practice. The Composition Study will occur twice a year, with the first occurring during the period from 1 April through 31 May, and the second occurring during the period from 1 October through 30 November. Vendor shall reasonably cooperate in each Composition Study, including providing a safe, all-weather location for Vendor's personnel or designated agent to select random Samples in a mutually agreed amount from Collected Material tipped by the City and/or its Designated Collection Contractor, not commingled with material received from any other source, commercial or residential), weigh such Samples, and then conduct separation and weighing of the sorted Recyclable Materials extracted from the Samples and any Residual

Material. The City shall be permitted to have its personnel observe all aspects of the Composition Study and verify the results obtained therefrom, but shall promptly register with the Composition Study team established by mutual agreement of the City and Vendor any disagreement with the study results before Recyclable Materials are processed at the Designated Facility. Vendor shall make its equipment and personnel reasonably available to conduct the Composition Study at no additional cost, unless the City requests additional studies beyond those specified herein. During the conduct of such Composition Study, the City or its designated agent may take or make a video, still photographs, or other electronic records of the process for archival purposes.

(ii) In addition, Vendor and City may cooperate in a study to determine the amount of process-related and customer-created Residuals. Such study will be conducted at a mutually agreeable time, based upon a mutually agreeable methodology.

(d) Revenue Share: Vendor shall compensate the City by paying to the City an amount each month equal to the Revenue Percent set forth in ATTACHMENT 1 times the Value of Recyclable Material derived from the Collected Material delivered by the City to Vendor for such month (the "***Revenue Share Payment***"). The calculation of the Revenue Share Payment shall be made by the Vendor monthly based upon the Value of Recyclable Material extracted from the Collected Material for that month, and such calculation shall be sent to the City by the last business day of the following month. The calculation of the Revenue Share Payment shall be a simple mathematical equation equal to the sum, for all Recyclable Material classes, of the Value of Recyclable Material for such class (calculated based upon the number of tons of each Recyclable Material class, derived from the most recent Composition Study) for the month in question, times the Revenue Percent (with all tons to be short tons, so that if the applicable index is quoting metric tons, then the index shall be converted to an equivalent value for short tons).

(e) Replacement or New Index; Dispute Resolution:

(i) To the extent that either party determines in good faith that any index listed in ATTACHMENT 1 no longer reasonably represents the market price for the referenced Recyclable Material class, then such party may propose a different index, and shall support its proposal by evidence as to how such different index more closely approximates the market price, from month to month, of the applicable class of Recyclable Material, and demonstrating that the proposed index is published in a manner that makes it equally available to both parties by a source that is unaffiliated with either party. If the other party, in good faith, concurs in such assessment of the proposed index, then the proposed index shall replace the index from ATTACHMENT 1 in calculating the amount of the Revenue Share Payment to which the City is entitled.

(ii) In the event that at any time there is no published reasonably acceptable index with respect to a Recyclable Material then listed in ATTACHMENT 1,

the parties agree to each select three independent brokers of the Recyclable Material active in the Southwestern region of the United States to provide an estimate of the mid-point of bid/ask quotations for the month in question for the Recyclable Material, and the index used to calculate the Revenue Share Payment to the City shall be the simple arithmetic average of the estimates provided by such independent brokers. By way of example and not by limitation, a published index for a Recyclable Material other than glass used on Attachment 1 that has experienced a drop by 40% over a two-month period is not reasonably acceptable

(iii) In the event that the parties agree that a bona fide, ready market is developed for the sale of Recyclable Material in classes not then subject to SFR Processing Services, then the parties shall mutually agree upon an index for such new Recyclable Material class, and in such case, Vendor shall no longer be permitted to include any such material in Residual Materials or to make a Disposal of any such Recyclable Material.

(iv) In the event a party shall nominate a replacement index for any of the indices listed in ATTACHMENT 1 (as adjusted from time to time by the inclusion of additional Recyclable Material classes), or shall nominate an index with respect to new classes of Recyclable Materials to be subject to SFR Processing Services, and the other party shall reject such nominated index, then the parties agree that they shall meet and confer in good faith as to an acceptable replacement index or new index, and if unable thereafter to agree, then they shall within 15 days of the rejected index nomination submit their respective positions to a reputable third party, designated by either the City or Vendor and acceptable to both (the "***Expert***"), not as an arbitrator but as an expert in the industry and that if such Expert shall concur with a party as to the appropriate index to use for the referenced Recyclable Material class, then the parties shall each abide by such decision, absent either bad faith on the part of the Expert or manifest error by the Expert. In the event either party shall believe that the decision by such Expert was made in bad faith or by manifest error, such party may bring an action in litigation to prevent the use of such index within thirty (30) days of the Expert's decision. If either party fails to contest the Expert's decision by the filing of a lawsuit in the state courts of Travis County, Texas within such 30-day period, then the Expert's decision shall be deemed accepted by the parties and shall become the index for the referenced Recyclable Material class until there shall be a material change in the marketplace such that it is reasonably likely that the index no longer reasonably represents the market price for the referenced Recyclable Material class. If such litigation is initiated, then the parties agree that the predicate issue for the court with respect to such index shall be whether or not the Expert acted in bad faith or made the decision in manifest error, and only if such finding is found in the affirmative by the court shall the litigation then be concerned with determining what is the appropriate index with respect to the referenced Recyclable Material class.

(f) Annual True-up of Processing Fee: In the event that as of each anniversary of the First Reset Date the City and its Designated Collection Contractors have failed to deliver a monthly average amount (measured in short tons) of Collected Material equal to the Minimum Award Amount, then Vendor shall calculate, invoice the City and be entitled to a payment equal to the difference in short tons between the monthly average delivered by or for the City to Vendor for SFR Processing Services and the Minimum Award Amount, times the then-applicable Processing Fee Rate (as determine in accordance with Section 5(b)) times 12.

(g) No Material Breach: The parties agree that if the City fails to deliver at least the percentage of total Collected Material committed to Vendor but is within 5% of the Minimum Award Amount owed to Vendor over such twelve (12) month period, the City will not commit a material breach under the Master Agreement.

(h) Living Wage and Healthcare: Vendor understands that, in order to help assure low employee turnover, quality services, and to reduce costs for health care provided to

uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a Living Wage and affordable health care protection. Vendor shall ensure that $11.39/hour will be paid to those employees performing work under this Service Schedule for their time spent on the City contract. Vendor will also provide an option for health insurance, to the extent required by federal and state law, to employees performing work under this Service Schedule. Pursuant to Paragraph 3.3 of the Master Agreement, this provision takes precedence over Schedule 7.6.2 to the Master Agreement. The parties agree that Sections 3 and 5 of Schedule 7.6.2 will not apply to this Service Schedule.

Section 6. Metrics and Composition Studies:

(a) Goals for Residual Limits. Vendor shall use all reasonable and commercially acceptable practices in the industry to limit the amount of Residual Materials subject to Disposal so that Recyclable Materials actually recovered from the Collected Material is ninety percent (90%) of the Collected Material as indicated by the most recent and agreed upon Composition Study. For avoidance of doubt, the parties hereby establish a goal and acknowledge that Vendor's failure to satisfy such goal shall not be deemed a breach of the Master Agreement or this Service Schedule. At the conclusion of each Composition Study, the City and Vendor shall use the results of that Composition Study to determine the average Residual Materials percentage and to set a goal for limiting the amount of Residual Material by establishing a maximum Residual Materials percentage to be achieved at the next Composition Study.

(b) Weighing Procedures. Vendor shall maintain at the Designated Facility in good working order accurately calibrated automated inbound scales suitable for weighing of both Collection Vehicles and Trailers entering the Designated Facility in conformance with the TDA certified truck scales. The automated scales for the inbound measurement shall (i) be capable of printing a ticket with the weight, time and date stamp for each vehicle in question, including a duplicate that shall be given to the driver of the vehicle, (ii) meet the TDA's standards for the determination of quantities, and (iii) be able to determine the quantity of all delivered and sold Recyclable Materials in accordance with TDA standards. The outbound measurement shall be the tare weight of Collection Vehicles and Trailers. Given the volume of Collected Material anticipated to be delivered to the Designated Facility, the City will make its best efforts to ensure that the inbound Collection Vehicles and Trailers time their deliveries so that they do not create unnecessary points of congestion leading into the Designated Facility.

(c) Tipping Floor and Non-sorted Material Storage. Vendor shall ensure that (i) its tipping floor is clean at all times in accordance with industry practices and safety standards, and (ii) has the capacity to store thereon no less than two (2) days of Collected Material delivered from the City or its Designated Collection Contractor, based upon a monthly tonnage of Collected Material delivered to the Designated Facility for the second largest monthly tonnage for the immediately preceding twelve (12) months in an all-weather condition.

(d) Storage of Recyclable Material. All Recyclable Material, once sorted and processed, shall be stored in a manner suitable for the particular kind and grade of such Recyclable Material so that it may efficiently be shipped to or picked up by the purchasers of

such Recyclable Material, and so that such Recyclable Material does not experience significant degradation in quality or quantity while being stored prior to sale and delivery.

Section 7. Priority and Capacity Limit Diversion:

(a) With respect to Vendor's acceptance of material, storage, or processing of the Collected Material, Vendor will prioritize acceptance of the Collected Material over material received from any other source so that City shall experience uninterrupted Services from Vendor.

(b) If, due to a condition within the Vendor's control at the Designated Facility, the Vendor is unable to accept, process, or store the Collected Material as required by this Service Schedule, the City may, after ten days' prior notice to Vendor, temporarily suspend or reduce the amount of Collected Material delivered to Vendor until the Vendor remedies the condition. If at any time during a given month the City exercises its option under this Section 7(b) to suspend or reduce the amount of Collected Material delivered to Vendor, Vendor agrees that City (i) will not have an obligation to deliver the Minimum Award Amount for that month, (ii) will not be penalized for that month in determining an Annual True-up under Section 5(f), and (iii) will not be in Material Breach under the Master Agreement.

Section 8. Assurances:

In the event that Vendor shall materially fail to meet any of the Metrics or other quality or quantity standards set forth in this Service Schedule, the City may in good faith if it has reason to question Vendor's intent or ability to perform, make demand to the Vendor for written and/or financial assurance of the intent to perform, including the posting of a bond as the City in its reasonable discretion shall determine is necessary to protect the City from additional cost or expense it might incurred as a result of Vendor's failure, and in such event Vendor may not commence or continue operations on behalf of the City at the MRF until such bond is posted. In the event that the assurance requested is not given within the time specified after demand is made, the City may treat this failure as an anticipatory repudiation of the Master Agreement. Negotiation over amount or form of assurance is not repudiation of the Master Agreement. This right to demand such financial assurances is without prejudice to the City's rights to demand assurance as otherwise provided in herein, and is without prejudice to any other rights or remedies the City may have with respect to any breach of the Master Agreement by Vendor.

Section 9. Deliverables

The failure of Vendor to perform the Deliverables listed below within the timetable provided shall result in the indicated Deliverable Credits to the City:

Deliverable	Standard	Deliverable Credit
I. Business Continuity Plan. Due by March 31 of each calendar year. Either (a) certify that there has been no need to revise the Business Continuity Plan, or (b) deliver a new Business Continuity Plan. a) Late		

b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	a) Per day b) Per business day c) Per business day	a) $100 b) $1,000 c) $10,000
II. Community Engagement Plan Adjusted Annually. a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	 a) Per day b) Per business day c) Per business day d) Per business day	 a) $50 b) $500 c) $1,000 d) $10,000

Section 10. Service Levels:

Schedule 13.1 is not applicable to this Service Schedule.

Section 11. Operations Audit:

Annually, during the time period from June 1st through July 31st, the City or a qualified third-party hired by the City (the ***"Auditor"***), will conduct an on-site audit at the Vendor's Designated Facility upon thirty (30) days' notice to Vendor, to make certain verifications in accordance with the auditor's worksheet, set forth in ATTACHMENT 3 (the "***Vendor's MRF Operations Audit***"). The Auditor may observe Vendor's recycling operations and visually review the facilities, records, and documents of Vendor reasonably necessary to establish operational compliance in accordance with the auditor's worksheet. Auditor shall not remove any of Vendor's documents, records, or other materials of any kind from Vendor's Designated Facility, unless Vendor provides written permission to do so. If the City choses to hire a qualified third-party to perform the on-site audit, the City will identify the third-party Auditor to Vendor in advance of the on-site audit for the sole purpose of allowing Vendor to verify whether the City's third-party Auditor poses a material conflict of interest to Vendor. Unless Vendor provides the City written notice that the identified third-party Auditor has a material conflict of interest with Vendor within forty-eight (48) hours of the City providing notice of the third-party Auditor's identity to Vendor, the third party Auditor will be deemed to have no conflict of interest.

Section 12. Evaluation for Percentage Awarded at 2nd Reset:

No later than 30 days prior to the Second Reset Date, the City will establish the Award Percent to be awarded to Vendor effective for the period running between the Second Reset Date and the Third Reset Date by considering, among other things:

(a) Vendor's pricing proposal (on a form provided to Vendor by the City) provided by the Vendor to the City on the 40th day before the Second Reset Date;

(b) Vendor's performance during the period after the First Reset Date measured in part by the percentage of Recyclable Materials received by Vendor from the City sold to

reputable processors of Recyclable Materials or otherwise diverted from Disposal for reuse, such as glass cullet for road base or shredded newspaper in insulation; and

(c) Vendor's good-will, teamwork, community engagement, and recycling education efforts.

[*the remainder of this page is intentionally blank, signature page following*]

Balcones Resources, Inc.

By: Kerry R. Getter

Name: Kerry R. Getter
Title: CEO

Date: 4/30/16

City of Austin

By: Bob Gedert

Name: Bob Gedert
Title: Director, Austin Resource Recovery

Date: May 5, 2016

ATTACHMENT 2

Recycling Processing Facility – Periodic Safety Inspection

Purpose – to ensure the health and safety of City employees and City vehicles while on-site at the receiving Recycling Processing Facility.

Procedure – Periodic inspections performed by City safety staff, utilizing the following checklist. Site inspection can include other mutually agreed upon issues of concern, however focused on the health and safety of City employees and vehicles.

Safety concerns identified through the periodic safety inspection shall be addressed and reasonably resolved within five business days, unless otherwise agreed upon.

Safety Checklist

A) Safety of City employees and City vehicles through Ingress and Egress from public roadway to facility site, including driveways from roadway to building. Yes____ Remedy Required____

B) Speed limits posted. Procedures in place to support City staff enforcement of its drivers violations of the City's safe driving practices. Yes____ Remedy Required____

C) Safety of City employees and City vehicles through scaling procedures, including the scale platform. Yes____ Remedy Required____

D) Safe driving practices of City employees observed regarding backing, including the use of a spotter. Yes____ Remedy Required____

E) Clear pathway and clear road surfaces for backing zone, including exterior and interior of building. Yes____ Remedy Required____

F) Clean restroom and water access for City employees. Yes____ Remedy Required____

G) Emergency provisions in place to address severe weather conditions and emergency situations as it affect City employees. Yes____ Remedy Required____

H) Proper procedures and immediate access to First Aid medical care in the event of on-site injury of City employees. Yes____ Remedy Required____

NOTES:

Inspected by: _____

Facility Representative: _____ Date:_____

ATTACHMENT 3

Vendor's MRF Operations Audit

In accordance with Schedule A, Section 11, annually, during the time period from June 1st through July 31st, the City or its hired qualified third-party (the "*Auditor*"), shall conduct an on-site audit at the Vendor's Designated Facility upon thirty (30) days' notice to Vendor, to make certain verifications. The Auditor may visually review records and documents of Vendor reasonably necessary to establish operational compliance in accordance with the auditor's worksheet. Auditor shall not copy or remove any of Vendor's documents, records, other materials from the Designated Facility, unless Vendor provides written permission to do so.

Checklist

A) Business Continuity Plan per Section 3(b): The Business Continuity Plan shall be designed to reasonably mitigate any reasonably foreseeable acts of Force Majeure including those that would be reasonably foreseeable to an experienced operator of a MRF located in the Southwestern United States that could be subject to the weather events and extremes as occur from time to time in Central Texas.

B) Permits (including compliance with OSHA and OSHCON) per Section 3(c)(i): Vendor shall (i) at all times have valid and up-to-date local and state permits, and shall allow the City's designated representative access to view and make copies of such permits during regular business hours upon forty-eight (48) hours' notice.

C) Living Wage and Healthcare per Section 5(h): Vendor shall ensure that $11.39/hour will be paid to those employees performing work under this Service Schedule for their time spent on the City contract. Vendor will also provide an option for health insurance, to the extent required by federal and state law, to employees performing work under this Service Schedule.

D) Weighing Procedures per Section 6(b): Vendor shall maintain at the Designated Facility in good working order accurately calibrated automated inbound scales suitable for weighing of both Collection Vehicles and Trailers entering the Designated Facility in conformance with the TDA certified truck scales. The automated scales for the inbound measurement shall (i) be capable of printing a ticket with the weight, time and date stamp for each vehicle in question, including a duplicate that shall be given to the driver of the vehicle, (ii) meet the TDA's standards for the determination of quantities, and (iii) be able to determine the quantity of all delivered and sold recyclable materials in accordance with TDA standards.

E) Storage of Recyclable Material per Section 6(d): All Recyclable Material, once sorted and processed, shall be stored in a manner suitable for the particular kind and grade of such Recyclable Material so that it may efficiently be shipped to or picked up by the purchasers of such Recyclable Material, and so that such Recyclable Material does not experience significant degradation in quality or quantity while being stored prior to sale and delivery.

NOTES:

Inspected by: _____

Facility Representative: _____ Date: _____

SEVENTH AMENDMENT TO THE MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

This **Seventh Amendment to the Master Recycling, Processing and Marketing Services Agreement** (*"Seventh Amendment"*) is made and entered into by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas (*"Vendor"*), and **City of Austin**, a home-rule municipality incorporated by the State of Texas (the *"City"*).

WITNESSETH:

WHEREAS, the City and Vendor entered into the **Master Recycling, Processing and Marketing Services Agreement** on April 27, 2011 (the "Agreement") for recycling materials by the City and its residents, including the reuse and marketing of such materials;

WHEREAS, under the terms of the Service Schedule for Processing Services appended to the Agreement as Exhibit A and titled *Service Schedule SFR Recyclable Materials Processing*, the City and Vendor agreed to reset certain terms of the Agreement at five year intervals for the duration of the Agreement and by subsequent amendments, the parties agreed to fix the First Reset Date as April 8, 2016;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, in order to allow the parties an extension of time to complete negotiating terms to be effective after the First Reset Date, the City and Vendor agree to further modify the Agreement and fix the First Reset Date as a new date certain as follows:

1. FIRST RESET DATE.

Section 1(j) of Exhibit A to the Agreement (*Service Schedule SFR Recyclable Materials Processing*) is amended to read as follows:

"(j) 1st Reset Date: April 29, 2016."

2. NO OTHER CHANGES TO AGREEMENT.

The City and Vendor agree that the change made by Section 1 of this Seventh Amendment is the full extent of any modification to the Agreement intended by the parties' execution of this Seventh Amendment.

This Seventh Amendment is executed and effective on April 8, 2016 as evidenced by the following signatures of the duly authorized representatives.

Balcones Resources, Inc.	**City of Austin**
By:	By:
Name: Kerry R. Getter	Name: Bob Gedert
Title: CEO	Title: Director, Austin Resource Recovery

SIXTH AMENDMENT TO THE MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

This **Sixth Amendment to the Master Recycling, Processing and Marketing Services Agreement** ("***Sixth Amendment***") is made and entered into by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas ("***Vendor***"), and **City of Austin**, a home-rule municipality incorporated by the State of Texas (the "***City***").

WITNESSETH:

WHEREAS, the City and Vendor entered into the **Master Recycling, Processing and Marketing Services Agreement** on April 27, 2011 (the "Agreement") for recycling materials by the City and its residents, including the reuse and marketing of such materials;

WHEREAS, under the terms of the Service Schedule for Processing Services appended to the Agreement as Exhibit A and titled *Service Schedule SFR Recyclable Materials Processing*, the City and Vendor agreed to reset certain terms of the Agreement at five year intervals for the duration of the Agreement and by subsequent amendments, the parties agreed to fix the First Reset Date as March 15, 2016;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, in order to allow the parties an extension of time to complete negotiating terms to be effective after the First Reset Date, the City and Vendor agree to further modify the Agreement and fix the First Reset Date as a new date certain as follows:

1. FIRST RESET DATE.

Section 1(j) of Exhibit A to the Agreement (*Service Schedule SFR Recyclable Materials Processing*) is amended to read as follows:

"(j) 1st Reset Date: April 8, 2016."

2. NO OTHER CHANGES TO AGREEMENT.

The City and Vendor agree that the change made by Section 1 of this Sixth Amendment is the full extent of any modification to the Agreement intended by the parties' execution of this Sixth Amendment.

This Sixth Amendment is executed and effective on March 15, 2016 as evidenced by the following signatures of the duly authorized representatives.

Balcones Resources, Inc.	**City of Austin**
By:	By:
Name: Kerry R. Getter	Name: Bob Gedert
Title: CEO	Title: Director, Austin Resource Recovery

FIFTH AMENDMENT TO THE MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

This **Fifth Amendment to the Master Recycling, Processing and Marketing Services Agreement** (*"Fifth Amendment"*) is made and entered into by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas (*"Vendor"*), and **City of Austin**, a home-rule municipality incorporated by the State of Texas (the *"City"*).

WITNESSETH:

WHEREAS, the City and Vendor entered into the **Master Recycling, Processing and Marketing Services Agreement** on April 27, 2011 (the "Agreement") for recycling materials by the City and its residents, including the reuse and marketing of such materials;

WHEREAS, under the terms of the Service Schedule for Processing Services appended to the Agreement as Exhibit A and titled *Service Schedule SFR Recyclable Materials Processing*, the City and Vendor agreed to reset certain terms of the Agreement at five year intervals for the duration of the Agreement and by subsequent amendments, the parties agreed to fix the First Reset Date as February 29, 2016;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, in order to allow the parties an extension of time to complete negotiating terms to be effective after the First Reset Date, the City and Vendor agree to further modify the Agreement and fix the First Reset Date as a new date certain as follows:

1. FIRST RESET DATE.

Section 1(j) of Exhibit A to the Agreement (*Service Schedule SFR Recyclable Materials Processing*) is amended to read as follows:

"(j) 1st Reset Date: March 15, 2016."

2. NO OTHER CHANGES TO AGREEMENT.

The City and Vendor agree that the change made by Section 1 of this Fifth Amendment is the full extent of any modification to the Agreement intended by the parties' execution of this Fifth Amendment.

This Fifth Amendment is executed and effective on February 29, 2016 as evidenced by the following signatures of the duly authorized representatives.

Balcones Resources, Inc.	**City of Austin**
By:	By:
Name: Kerry R. Getter Title: CEO	Name: Bob Gedert Title: Director, Austin Resource Recovery

FOURTH AMENDMENT TO THE MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

This **Fourth Amendment to the Master Recycling, Processing and Marketing Services Agreement** ("***Fourth Amendment***") is made and entered into by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas ("***Vendor***"), and **City of Austin**, a home-rule municipality incorporated by the State of Texas (the "***City***").

WITNESSETH:

WHEREAS, the City and Vendor entered into the **Master Recycling, Processing and Marketing Services Agreement** on April 27, 2011 (the "Agreement") for recycling materials by the City and its residents, including the reuse and marketing of such materials;

WHEREAS, under the terms of the Service Schedule for Processing Services appended to the Agreement as Exhibit A and titled *Service Schedule SFR Recyclable Materials Processing*, the City and Vendor agreed to reset certain terms of the Agreement at five year intervals for the duration of the Agreement and by subsequent amendments, the parties agreed to fix the First Reset Date as January 31, 2016;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, in order to allow the parties an extension of time to complete negotiating terms to be effective after the First Reset Date, the City and Vendor agree to further modify the Agreement and fix the First Reset Date as a new date certain as follows:

1. FIRST RESET DATE.

Section 1(j) of Exhibit A to the Agreement (*Service Schedule SFR Recyclable Materials Processing*) is amended to read as follows:

"(j) 1st Reset Date: February 29, 2016."

2. NO OTHER CHANGES TO AGREEMENT.

The City and Vendor agree that the change made by Section 1 of this Fourth Amendment is the full extent of any modification to the Agreement intended by the parties' execution of this Fourth Amendment.

This Fourth Amendment is executed and effective on January 31, 2016 as evidenced by the following signatures of the duly authorized representatives.

Balcones Resources, Inc.	**City of Austin**
By:	By:
Name: Kelly R. Getter Title: CEO	Name: Bob Gedert Title: Director, Austin Resource Recovery

NA13000022

Third KG

~~SECOND~~ AMENDMENT TO THE MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

KG

Third KG

This ~~Second~~ **Amendment to the Master Recycling, Processing and Marketing Services Agreement** ("~~*Second*~~ Third *Amendment*") is made and entered into by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas ("*Vendor*"), and **City of Austin**, a home-rule municipality incorporated by the State of Texas (the "*City*").

WITNESSETH:

WHEREAS, the City and Vendor entered into the **Master Recycling, Processing and Marketing Services Agreement** on April 27, 2011 (the "Agreement") for recycling materials by the City and its residents, including the reuse and marketing of such materials;

WHEREAS, under the terms of the Service Schedule for Processing Services appended to the Agreement as Exhibit A and titled *Service Schedule SFR Recyclable Materials Processing*, the City and Vendor agreed to reset certain terms of the Agreement at five year intervals for the duration of the Agreement and by that **First Amendment to the Master Recycling, Processing and Marketing Services Agreement** dated September 28, 2015, the parties agreed to fix the First Reset Date as December 31, 2015;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, the City and Vendor agree to further modify the Agreement and fix the First Reset Date as a new date certain as follows:

1. FIRST RESET DATE.

Section 1(j) of Exhibit A to the Agreement (*Service Schedule SFR Recyclable Materials Processing*) is amended to read as follows:

"(j) 1st Reset Date: January 31, 2016."

2. NO OTHER CHANGES TO AGREEMENT.

Third KG

The City and Vendor agree that the change made by Section 1 of this ~~Second~~ Amendment is the full extent of any modification to the Agreement intended by the parties' execution of this ~~Second~~ Third Amendment.

KG

★ Third KG

This ~~Second~~ Amendment is executed and effective on December 31, 2015 as evidenced by the following signatures of the duly authorized representatives.

Balcones Resources, Inc.	**City of Austin**
By: Kerry R. Getter	By: Bob Gedert
Name: Kerry R. Getter	Name: Bob Gedert
Title: CEO	Title: Director, Austin Resource Recovery

3. All pricing will be retroactive to January 1, 2016.

KG

SECOND AMENDMENT TO THE MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

This **Second Amendment to the Master Recycling, Processing and Marketing Services Agreement** ("***Second Amendment***") is made and entered into by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas ("***Vendor***"), and **City of Austin**, a home-rule municipality incorporated by the State of Texas (the "***City***").

WITNESSETH:

WHEREAS, the City and Vendor entered into the **Master Recycling, Processing and Marketing Services Agreement** on April 27, 2011 (the "Agreement") for recycling materials by the City and its residents, including the reuse and marketing of such materials;

WHEREAS, under the terms of the Service Schedule for Processing Services appended to the Agreement as Exhibit A and titled *Service Schedule SFR Recyclable Materials Processing*, the City and Vendor agreed to reset certain terms of the Agreement at five year intervals for the duration of the Agreement and by that **First Amendment to the Master Recycling, Processing and Marketing Services Agreement** dated September 28, 2015, the parties agreed to fix the First Reset Date as December 31, 2015;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, the City and Vendor agree to further modify the Agreement and fix the First Reset Date as a new date certain as follows:

1. FIRST RESET DATE.

Section 1(j) of Exhibit A to the Agreement (*Service Schedule SFR Recyclable Materials Processing*) is amended to read as follows: KGetter, Balcones

"(j) 1st Reset Date: January ~~31~~ 15, 2016."

2. NO OTHER CHANGES TO AGREEMENT.

The City and Vendor agree that the change made by Section 1 of this Second Amendment is the full extent of any modification to the Agreement intended by the parties' execution of this Second Amendment.

This Second Amendment is executed and effective on December 31, 2015 as evidenced by the following signatures of the duly authorized representatives.

Balcones Resources, Inc.	**City of Austin**
By:	By: Bob Gedert
Name: Kerry R. Getter Title: CEO	Name: Bob Gedert Title: Director, Austin Resource Recovery

FIRST AMENDMENT TO THE MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

This **First Amendment to the Master Recycling, Processing and Marketing Services Agreement** ("***First Amendment***") is made and entered into by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas ("***Vendor***"), and **City of Austin**, a home-rule municipality incorporated by the State of Texas (the "***City***").

WITNESSETH:

WHEREAS, the City and Vendor entered into the **Master Recycling, Processing and Marketing Services Agreement** on April 27, 2011 (the "Agreement") for recycling materials by the City and its residents, including the reuse and marketing of such materials;

WHEREAS, under the terms of the Service Schedule for Processing Services appended to the Agreement as Exhibit A and titled *Service Schedule SFR Recyclable Materials Processing*, the City and Vendor agreed to reset certain terms of the Agreement at five year intervals for the duration of the Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, the City and Vendor agree to fix the First Reset Date as a date certain as follows:

1. FIRST RESET DATE.

Section 1(j) of Exhibit A to the Agreement (*Service Schedule SFR Recyclable Materials Processing*) is amended to read as follows:

"(j) 1st Reset Date: December 31, 2015."

2. NO OTHER CHANGES TO AGREEMENT.

The City and Vendor agree that the change made by Section 1 of this First Amendment is the full extent of any modification to the Agreement intended by the parties' execution of this First Amendment.

This First Amendment is executed and effective on September 28, 2015 as evidenced by the following signatures of the duly authorized representatives.

Balcones Resources, Inc.	**City of Austin**
By:	By:
Name: Kerry R. Getter	Name: Bob Gedert
Title: CEO Balcones Resources, INC	Title: Austin Resource Recovery Director

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SCHEDULES

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EXHIBITS

MASTER RECYCLING, PROCESSING AND MARKETING SERVICES AGREEMENT

This **Master Recycling, Processing and Marketing Services Agreement** (this "***Agreement***") is made and entered into as of April 27, 2011 (the "***Execution Date***"), by and between **Balcones Resources, Inc.**, a Texas corporation, having a principal place of business in Austin, Texas ("***Vendor***"), and City of Austin, a home-rule municipality incorporated by the State of Texas (the "***City***").

WITNESSETH:

WHEREAS, the City wishes to obtain from Vendor and Vendor wishes to provide to the City, certain services with respect to recycling of materials by the City and its residents, including the reuse and marketing of such materials, so that the City may devote its resources to its other business;

WHEREAS, Vendor intends to leverage its business processes, information technology services, and integration capabilities to enhance the quality of the services provided to the City, and to provide flexibility in both the type and amount of services provided to the City;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, the City and Vendor agree as follows:

1. PURPOSE OF THIS AGREEMENT.

1.1 Service Schedules. Simultaneously with the execution of this Agreement, the parties are also executing an Exhibit A (processing of collected residential recycling materials) ("***Processing Services***"), which describes in detail Vendor's provision of certain recycling-related services and activities to the City. From time to time, additional exhibits describing other Services that Vendor may provide to the City (each a "***Service Schedule***") may be executed between the parties, and annexed hereto, in which event, except to the extent expressly provided to the contrary in the applicable Service Schedule, the provision of the additional Services set forth thereon shall be subject to all of the terms and conditions set forth in this Agreement.

1.2 Frame Agreement. The parties intend this Agreement to serve as a master or frame agreement that sets forth certain terms applicable to Vendor's provision of all Services, including additional services pursuant to future Service Schedules added to this Agreement from time to time. Section 19.8 also sets forth a process whereby the City and Vendor will periodically engage in strategic planning for the possible expansion of the Services that Vendor will provide and the execution of additional Service Schedules for such expanded Services. Such future expansions may, but not necessarily will, include mutually agreeable Service Schedules governing the direct collection of recyclable material from residences ("***Collection Services***"), the collection and processing of recyclable materials from commercial locations ("***Commercial Services***"), and such additional Services as the Parties shall hereafter adopt by mutual agreement. Nothing in this Agreement shall preclude or prohibit Vendor from providing the same or similar services outlined in this Agreement to third parties during the term of this Agreement. This Agreement is intended to be nonexclusive in nature.

2. PARTIES' OBJECTIVES.

2.1 Objectives. In executing this Agreement, the Parties agree that Vendor shall use its reasonable best efforts to perform the Services at least at the same level and with the same degree of accuracy, quality, completeness, and responsiveness as is reasonably expected of third parties providing the same or substantially similar services to other municipalities in Central Texas.

2.2 Purpose of Objectives. The Parties do not intend Section 2.1 to (i) grant any rights or create any obligations apart from those provided for elsewhere in this Agreement, including those pertaining to Service Levels; or (ii) constitute or be evidence of an express or implied warranty by either Party. The Parties' rights and obligations under this Agreement, including those pertaining to Service Levels, warranties (including warranty disclaimers), and rights and remedies are as set forth expressly in this Agreement, and the relevant Exhibits and Schedules.

3. DEFINITIONS AND RULES OF CONSTRUCTION.

3.1 Definitions. Capitalized terms in this Agreement and the Service Schedules shall have the meanings ascribed to them in Schedule 3.1 or elsewhere in the Agreement or the Service Schedules.

3.2 General Rules of Construction. As used in this Agreement and the Service Schedules, (i) any reference to this Agreement, a Service Schedule, or other agreement shall mean a reference to the item as amended from time to time; (ii) any reference to a document means and includes information maintained in any medium, including electronic media; (iii) any reference to the word "or" means "and/or"; (iv) "including" means "including but not limited to"; and (v) "hereof," "herein," "hereunder," and words of similar meaning refer to this Agreement as a whole and not to any particular subdivision hereof.

3.3 Order of Precedence. This Agreement, the Schedules attached to this Agreement, the Service Schedules and the exhibits and attachments attached thereto, as modified by any Change Approvals executed by the parties pursuant to this Agreement, constitute a single agreement. In case of any ambiguity among the aforesaid agreement documents, the ambiguity will be interpreted in accordance with the following order of precedence:

3.3.1 This Agreement, including Schedules 3.1, 6.1 and 13.1.

3.3.2 The Service Schedules and exhibits and attachments thereto (including Change Approvals).

3.3.3 The Schedules to this Agreement not listed in Section 3.3.1.

Notwithstanding the foregoing, a Service Schedule shall take precedence over this Agreement in the event of any ambiguity with respect to the description of Services to be performed under such Service Schedule or the price, cost, fees or revenue due to any Party pursuant to such Service Schedule. No provision of any Service Schedule is intended to modify the terms and conditions

set forth in this Agreement or any of the Definitions set forth in Schedule 3.1 or elsewhere in this Agreement.

4. SERVICES TO BE PROVIDED.

4.1 The Services. The City intends to transfer and assign responsibility for the performance of certain recycling and marketing of recyclable materials services, disposal of Residual Material and activities related to the City's zero waste initiative (collectively "***Services***") to Vendor. The Services are described in detail in the Service Schedules.

4.2 City Responsibilities. The City's responsibilities to Vendor that are necessary for provision of the Services; including (i) dates by which such responsibilities must be discharged; (ii) all deliverables to be provided by the City to Vendor in connection with the Services; (iii) designation of all Premises that are to be made available to Vendor in connection with the Services; and (iv) any other responsibilities agreed upon by the parties (collectively "***City Responsibilities***") as set forth in the applicable Service Schedule.

4.3 Services Inclusive. The Services include the functions and activities set forth in the applicable Service Schedule and, at no additional charge to the City, all reasonably related ancillary functions and activities.

4.4 Non-Exclusive Agreement. This is a non-exclusive agreement. Without prejudice to Vendor's obligation to make any payment set forth on a Service Schedule, Vendor may perform services identical or comparable to the Services to any third party upon terms, rates and conditions determined by Vendor in its sole discretion. Likewise, except to the extent a certain volume of activity may be guaranteed under a Service Schedule, the City is under no obligation to offer any services or processes to Vendor, and may in its sole discretion provide itself or engage third parties to provide services comparable to the Services. Until the final Contract Year prior to a Reset Date, the City will use commercially reasonable efforts to offer Vendor the first review (which may be coincident with a review by a Designated Competitor) of opportunities for provision of additional services to the City that are the same as or similar in type to the Services or complementary to the Services. Nothing in this Section 4.4 is intended to provide Vendor with a right of first refusal. Vendor acknowledges that the City Procurement Department may not perform procurement of goods or services by all of the City Affiliates and business units and that some Affiliates and business units procure goods and services independently of the City Procurement Department, and agrees that the City shall not be in breach of this Section 4.4 should such a City Affiliate or business unit contract for services that are the same as or similar in type to the Services or complementary to the Services without first offering Vendor the opportunity to review such opportunity.

4.5 Improvements and New Technology. During the term of any Service Schedule, Vendor shall not be obligated, but will use reasonable efforts to inform the City of any new technology, new process, or other business development that Vendor believes will likely improve the Services. The Parties will discuss in good faith the incorporation of any such technology or processes into Vendor's provision of the Services; provided, however, any agreement to make such incorporation shall also be subject to the provisions of this Agreement and the City is under

no obligation to accept any improvement or new technology that would either increase the price for any Services or require the City to make a capital investment.

4.6 Mutual Cooperation. In order to achieve the objectives of this Agreement, each Party shall provide the other Party with such cooperation and assistance as is reasonably required by the other Party to perform its obligations under this Agreement and the Service Schedules. Such cooperation and assistance shall not be construed to mean (i) that either Party must consent to requests for consent by the other Party; (ii) that either Party must agree to a modification of the provisions of this Agreement or the Service Schedules; or (iii) that either Party must agree to incur any expenses that it would not have reasonably contemplated in connection with such cooperation or assistance.

5. TERM.

5.1 This Agreement. This Agreement shall be binding on the parties upon the Execution Date, and shall become effective as of April 27, 2011, and, unless earlier terminated in accordance with its provisions, shall remain in force until the twentieth (20^{th}) anniversary of the Acceptance Date (the "***Term***") of the first Service Schedule executed between the parties. Nine (9) months prior to each Reset Date, the Parties will commence good-faith discussions to determine whether a change in the volume of material or types of services provided under the Agreement is mutually desirable. No later than six (6) months prior to each Reset Date, each Party shall give written notice to the other Party indicating whether such Party wishes to materially change the volume of material or increase the types of services provided under the relevant Service Schedule. Failure to provide such notice shall be deemed to be such Party's indication of its desire to let the volumes and services remain unchanged under the applicable Service Schedule. Any proposed material Change to the volume of material or services provided under a specific Service Schedule shall be subject to the provisions of Section 20, below. At least one (1) year prior to the twentieth (20) anniversary of the applicable Acceptance Date, each Party shall notify the other in writing whether it desires to renew and extend the Agreement (or relevant Service Schedule) or to let it expire. The failure of a Party to provide such notice timely shall be deemed to be such Party's election to let the Agreement (or relevant Service Schedule) expire subject to termination assistance under Section 22; provided that if a Party indicates its desire to renew the Agreement (or relevant Service Schedule), and the other Party may be willing to do so upon the mutual agreement as to a Change, then the provisions of Section 20 shall apply to the resulting negotiations, but without prejudice to a Party's right to elect to permit the Agreement (or relevant Service Schedule) expire.

5.2 Service Schedules. Each Service Schedule will include (i) the date on which the Transition Period for the services covered by the applicable Service Schedule will commence (the "***Transition Commencement Date***") and the duration of the Transition Period, and (ii) the date (the "***Trial Commencement Date***") on which the Trial Period shall commence. Responsibility for the applicable SFR Recycling Processing Services will be transferred to Vendor on the date set forth in Exhibit A. Immediately after the applicable Transition Period, Vendor shall commence performance of the applicable Services. Each Service Schedule (including those added after the Execution Date) will become effective on the date designated thereon by the Parties, and will remain in force for the remainder of the Term (or such earlier date as specified on the relevant Service Schedule). Upon expiration or termination of this

Agreement for any reason, all Service Schedules shall terminate automatically. Termination of any Service Schedule will not result in the automatic termination of this Agreement, and each Service Schedule shall continue in force and effect not withstanding the termination of any other Service Schedule.

6. CHARGES.

6.1 General. Fees, charges, revenue sharing and other amounts due in consideration of the Services (collectively "***Charges***"), and payment terms are set forth on Schedule 6.1, which may be amended upon the Parties' mutual agreement from time to time, or as otherwise provided for herein.

6.2 Billing Procedures. Charges based upon the composition of recyclable material, if any, specified in the Service Schedules shall be billed monthly in arrears, no later than the end of the following month. Any non-standard charges (such as commissions, incentive payments, bonuses, Service Level Credits, profit-sharing, cost reduction sharing, termination charges, payment for purchase of assets, reimbursable expenses, or any other amount due from one Party to the other arising under any Service Schedule) ("***Non-Standard Charges***") shall be billed as provided in Schedule 6.1 or the applicable Service Schedule. To the extent that a charge is calculated using an estimated amount (for example, the estimated net charges for a particular period) prior to the Acceptance Date, then such charge shall be subject to a true-up or reconciliation no later than the end of the first complete calendar quarter following the Acceptance Date. After the applicable Cutover Date, such charge (if any) shall be subject to a quarterly true-up or reconciliation following the applicable calendar quarter, initiated upon the demand of either Party.

6.3 Invoices. Vendor shall provide an accounting statement for all Service volumes and Charges to the City each month (an "***Accounting Statement***"), which Accounting Statement shall separately identify the Services and volumes for all amounts owed by one Party to the other for such month (including any applicable true-ups). The monthly Accounting Statement shall be in a form reasonably acceptable to both parties that conforms to the City internal accounting system. All Accounting Statements must be submitted electronically to an address specified by the City either in the form of an electronic spreadsheet in a readily available COTS format, or in such other format as the Parties mutually agree from time to time.

6.4 Payment Terms. Payment of Charges of the undisputed portions of each Accounting Statement are due thirty (30) days after the City receipt of the Accounting Statement. Any amount due from one Party to the other that is not paid when due (including any refunds, revenue shares or other payments due to a Party of an estimated Charge in an amount in excess of the trued-up actual Charge) shall, after a fifteen-day grace period, be paid together with interest at a rate equal to the lower of (i) one per cent (1.0%) per month or (ii) the highest interest rate permitted by Applicable Law (the "***Interest Rate***") from the date the amount was originally due through the date payment is received. Should the City in good faith dispute any portion of an Accounting Statement or other claim of amount due, the City shall (i) pay all non-disputed amounts on the invoice when due; (ii) notify Vendor in writing of the disputed amounts by when payment would otherwise have been due; (iii) cooperate with Vendor promptly to resolve the

dispute; and (iv) pay the agreed-upon portion of the disputed amount (with interest) promptly upon resolution of the dispute.

6.5 Funding Out. Notice is given Vendor of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any Person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin.

6.6 Appropriations. Vendor acknowledges that the City is a municipal governmental entity, whose powers as a home rule city are governed by the Constitution of the State of Texas. The Texas Constitution contains certain requirements to ensure that certain types of municipal contracts have an identified source of funding. To the extent that such Texas Constitutional provisions are applicable, the City and Vendor agree that the City's Solid Waste Enterprise Fund provides an annual source of revenue of the City, which is expected to be in excess of any amount necessary to meet the obligations of the City to Vendor under this Agreement. However, if at any time during the term of this Agreement the City loses access to such funds to cover the cost of solid waste collection and disposal, the City shall promptly provide Vendor written notice of the loss of such access, and if the City is expected to make net payments to the Vendor pursuant to the applicable Service Schedule, the City should include in such notice any failure of the City to make an adequate appropriation for any fiscal year to pay the net amounts anticipated to be due from the City to the Vendor under the Service Schedule, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the applicable Service Schedule. In the event that the City is reasonably likely under the applicable Service Schedule to owe in any relevant period a positive amount to the Vendor net of any credits or share of proceeds that will be owed to the City and there is an absence of appropriated or other lawfully available funds to make such payment, then the applicable Service Schedule shall be voidable by Vendor upon sixty (60) days notice to the City to the extent and only to the extent that such funding is not appropriated or available, with the City having a right to cure during such sixty (60) day period by either (i) restoring the availability of the Solid Waste Enterprise Fund to pay the reasonably foreseeable net obligations of the City to Vendor under such Service Schedule, or (ii) by council action making appropriations of City funds in an amount necessary to pay the reasonably foreseeable net obligations of the City to Vendor under such Service Schedule. The absence of appropriated or other lawfully available funds to pay all of the City's obligations under this Agreement or any relevant Service Schedule after the expiration of such sixty (60) day period will allow Vendor to terminate individual Service Schedules hereunder, or at Vendor's election, this Agreement in its entirety, by providing written notice to the City within ninety (90) days thereafter. If Vendor fails to terminate the relevant Service Schedule or this Agreement, the obligations of Vendor and the City thereunder and hereunder shall continue in effect, and at Vendor's written election made within such ninety (90) day period, the City shall reduce the processing volumes delivered to Vendor proportionately to coincide with the reduced funding level availability. In the event that Vendor terminates any Service Schedule as a result of the operation of this Section 6.6, the City shall be liable to the Vendor for the payment of liquidated damages, if any, as specified in the relevant Service Schedule pursuant to the terms of Section 22.2.3.

6.7 Dispute Not Grounds for Nonperformance. The existence of a good-faith dispute over an invoice shall in no circumstances be grounds for either Party's failure to perform or delay in performing its obligations under this Agreement or any Service Schedule.

6.8 Currency. All invoices shall be stated, and all payments made, in United States dollars.

6.9 Sales Taxes. Charges and other compensation set forth in a Service Schedule do not include sales, use, and similar taxes levied on Vendor's provision or the City's use of the Services (collectively "***Sales Taxes***"). Generally, the City is exempt from all sales taxes. In the event there arises any question regarding the applicability of sale tax to any Charge, Vendor shall consult with the City prior to including any sales taxes on an Accounting Statement.

6.10 Records. Vendor will maintain complete and accurate records of any supporting documentation for all amounts on any Accounting Statement sent to the City under this Agreement, or which should have been involved on any Accounting Statement, and will retain each record for a period expiring upon the earlier of: (i) seven (7) years after the expiration or termination of this Agreement, or (ii) seven (7) years following the end of the calendar year during which such record was created. During the Term and any subsequent periods for which Vendor is required to maintain such records, the City may review such records pursuant to Section 18.

6.11 Out-of-Scope Services. Services not included hereunder or in a Service Schedule will be provided at prices and on terms agreed by the Parties.

6.12 Vendor's Expenses. Vendor is responsible for all of its out-of-pocket expenses incurred in its performance of the Services, except to the extent expressly provided in a Service Schedule.

6.13 Adjustments and Reset. All Charges may be subject to adjustment, reset, or renegotiation as provided in this Agreement, Schedule 6.1, or the applicable Service Schedule.

7. PERSONNEL.

7.1 Vendor. Vendor shall utilize in the performance of the Services such technical and administrative personnel as Vendor deems appropriate for the performance of the Services and Vendor's obligations hereunder. Vendor shall, at all times, designate a senior member of management to serve as the primary point of contact in the event a material dispute or issue should arise under this Agreement ("***Vendor Senior Officer***"), and shall promptly replace, and notify the City in writing, in the event there is any vacancy in the Vendor Senior Officer position. The Service Delivery Manager shall report directly to the Vendor Senior Officer.

7.2 Replacement of Personnel.

7.2.1 If the either Party reasonably believes that the performance or conduct of any of the other Party's personnel assigned to the performance of the Services under this Agreement is unsatisfactory or unacceptable or if the City otherwise reasonably objects to any individual's assignment to performance of Services under this Agreement, such Party shall so

notify the other Party in writing, and the other Party shall promptly take such steps as it deems appropriate to address the performance, conduct, or assignment of such person. In the event that such objectionable performance, conduct, or assignment is not cured to the objecting Party's reasonable satisfaction within thirty (30) days after receipt of such written notice, then upon the written request of the objecting Party, the other Party shall reassign such person to other duties not directly related to this Agreement or the performance of any Services or obligations under any Service Schedule. Replacement of any Vendor personnel shall in no event be grounds for any delay in performing or failure to perform the Services in the manner set forth in the applicable Service Schedule unless such replacement is carried out at the request of the City and such replacement directly results in a delay in performing or failure to perform the Services.

7.2.2 Notwithstanding the provisions of Section 7.2.1, above, Vendor shall not have the right to request the reassignment by the City of any of the following persons from acting as a liaison with respect to any aspect of the Services, or as a manager of employees of the City in the performance of any obligations of the City under this Agreement or any Service Schedule:

7.2.2.1 Any elected official;

7.2.2.2 The City Manager or Assistant City Manager;

7.2.2.3 Any director of a department of the City; or

7.2.2.4 Any departmental manager of the City.

7.3 Transferred Employees. If, and solely in the event that, any future Service Schedule requires Vendor to perform Services then currently being provided directly by City employees, then set forth on each applicable Service Schedule prior to its execution shall be the employees who will be transitioned to Vendor's employ pursuant to such Service Schedule (the "***Transferred Employees***"). Vendor will offer employment to the Transferred Employees. Vendor shall at a minimum provide terms and conditions that comply with the standards set forth in any applicable Schedule 7.3 for the relevant Service Schedule. The Parties intend that transition of the Transferred Employees shall occur by termination of their employment with the City and simultaneous reemployment by Vendor on the applicable Trial Commencement Date, for each Transferred Employees (the "***Transfer Date***"). Nothing in this Section is intended to apply to any persons that immediately prior to such transfer are employed by the City as either Temporary Workers or that are Probationary Workers.

7.3.1 Offer of Employment; Retention. The terms and conditions of Vendor's offer of employment, including the minimum retention periods for each Transferred Employee, if any, shall be as negotiated and mutually agreed prior to and as set forth in the Schedule 7.3.1 that is specifically applicable to the relevant Service Schedule (meaning that for each Service Schedule for which there shall be any transfer of employees, there shall be a unique Schedule 7.3.1). During the applicable minimum retention period, Vendor will not transfer from the City account the Transferred Employees without the prior written approval of the City, such approval not to be unreasonably withheld or delayed; provided, however, that such restriction on transfer during the minimum retention periods will not limit the right of any Transferred Employee to

resign or the right of Vendor to promote such Transferred Employee or to terminate or suspend the employment of any Transferred Employee for cause, performance, death, disability, illness or other personal reasons of similar urgency and gravity. Nothing in Section 7.3 or this Section 7.3.1 shall require Vendor to employ any such employee who refuses an offer of employment from Vendor.

7.3.2 Cooperation. The City shall reasonably cooperate with Vendor in its evaluation of the Transferred Employees and in making such offers of employment, including cooperating by providing Vendor with access to interview the Transferred Employees and with any information reasonably requested by Vendor and authorized for release in writing by the Transferred Employees regarding the salary, length of service, performance appraisals, disciplinary reports, background, history of sick and vacation days, and other benefits or issues applicable to each of the Transferred Employees through the Transfer Date. If a Transferred Employee does not authorize the release of such information, Vendor shall not be obligated to hire such Transferred Employee. The City shall also promptly inform Vendor of any terminations of employment, disciplinary actions, or other circumstances that occur prior to the Transfer Date with respect to any of the Transferred Employees. If Vendor, in good faith, objects to the hiring of a specific person as a Transferred Employee as a result of its interview and review of the City's records, than the City Liaison Officer and the Vendor Senior Officer shall meet and confer regarding such Transferred Employee, but Vendor shall not be obligated to hire such employee.

7.3.3 Parties' Responsibilities to Transferred Employees. Upon his or her respective employment by Vendor, Vendor shall be solely responsible for providing salaries and employee benefits to each Transferred Employee who is hired by Vendor upon terms and conditions and with benefits comparable to Vendor's other employees with similar skills, experience and tenure providing Services hereunder. Until termination of his or her respective employment by the City, the City shall be solely responsible for providing salaries and employee benefits to each Transferred Employee. If applicable, the City is responsible for payment of severance to each Transferred Employee, including any Transferred Employee who declines to accept employment with Vendor, except to the extent the severance claim is based upon Vendor's breach of its obligations under this Agreement. Vendor shall not be responsible for any vacation days, sick days or similar benefits that a Transferred Employee has accrued prior to the applicable transfer date.

7.4 Independent Contractors. The Parties are, and shall at all times be, independent contractors with respect to one another and with regard to all performance under this Agreement. Neither Party shall have the authority to enter into any agreement, nor to assume any liability, on behalf of the other Party, nor to bind or commit the other Party in any manner, except as expressly provided herein. Each Party shall have sole responsibility for such Party's employees at any given time, including responsibility for the management, supervision, direction, and control of such employees, the payment of all compensation to them, the provision of employee benefits to them and for injury to them that occurs in the course of their employment. Except with respect to the provisions of Section 7.6, each Party shall be solely responsible for all aspects of labor relations with such Party's employees, including their hiring, supervision, evaluation, discipline, firing, wages, employee benefits, overtime, job and shift assignments, and all other

terms and conditions of their employment, and the other Party shall have no responsibility whatsoever for any of the foregoing.

7.5 No Third Party Beneficiaries. Without limiting the generality of Section 31.10, nothing in this Section 7 is intended to provide to any employee of either Party any benefit or right, or entitle any employee to any claim, cause of action, remedy, or right of any kind, the intent of the parties being that this Agreement will not be deemed to create any obligations of either Party to any individual employee or to create any right to any employee of either Party. No employee will have any rights to enforce any part of this Agreement including this Section 7, either for his or her own benefit or otherwise.

7.6 Special Conditions Regarding Transferred Employees and Employees of Vendor Engaged in Provision of Services. Notwithstanding that Vendor is an independent Vendor of the City and that Vendor alone is responsible for the obligations due any of its employees, including Transferred Employees, engaged in Services on behalf of the City, the City, as a governmental unit, has an interest in ensuring that all persons engaged in providing it Services are fairly treated, compensated, and protected from unreasonable danger. Accordingly, Vendor agrees that each person engaged in providing Services to the City, whether direct employees of Vendor, or of any of its Permitted Subcontractors, shall be entitled to protections under the following requirements:

7.6.1 Equal Opportunity.

7.6.1.1 Equal Employment Opportunity. Neither Vendor nor Vendor's agent nor any Permitted Subcontractor, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, nor any contract awarded by the City unless the Vendor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Vendor shall sign and return the Non-Discrimination Certification attached hereto as Schedule 7.6.1.1

7.6.1.2 Americans With Disabilities Act (ADA) Compliance. Neither Vendor nor Vendor's agent nor any Permitted Subcontractor shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

7.6.2 Living Wage and Health Benefits Election on Service Schedule. If, and solely in the event that, negotiations leading to the execution of a particular Service Schedule result in the Parties having tentatively agreed (subject only to final approval by the appropriate City official or governing body) that the City of Austin's Living Wage ordinance will apply to the Services provided under such Service Schedule, then before presentation to the final City authority empowered to execute such Service Schedule, the applicable Service Schedule shall indicate the costs of providing the Services thereunder, with the cost of complying with the Living Wage ordinance of the City (both as to minimum wages and as to health benefits) shown as a separate cost from the provision of such Services absent compliance with the Living Wage ordinance. The City shall then have the right, to be made at or prior to the execution by the City

of the applicable Service Schedule, to elect in writing to receive the Services to be provided by Vendor under the applicable Service Schedule with or without the Living Wage ordinance being applicable. Should the City elect to receive such Services with the Living Wage ordinance being applicable, then the cost to the City shall include such additional amounts shown on the Service Schedule as being applicable for minimum wage and benefits requirements and the provisions of Schedule 7.6.2 shall automatically apply to Vendor's obligations under the relevant Service Schedule (but not with respect to any Service Schedule for which such election has not been expressly made). If the City shall elect to receive the Services without the Living Wage ordinance being applicable, then the City shall avoid the costs associated therewith, and the provisions of Schedule 7.6.2 shall not apply. In the event that the Living Wage ordinance of the City is elected by the City to apply to a particular Service Schedule, and Vendor provides similar services to third parties as it provides to the City pursuant to that Service Schedule, Vendor shall have no obligation to apply the provisions of this Section 7.6.2 to those employees to the extent that they are performing services to such third parties, and the provisions of this Section 7.6.2 shall not apply to Temporary Workers or Probationary Workers, provided that Vendor shall not use persons with such status in an attempt reasonably calculated to evade the obligations of the City's Living Wage ordinance.

7.6.3 Compliance with Health, Safety, and Environmental Regulations. The Vendor, its Permitted Subcontractors, and their respective employees, shall comply fully with all federal, state, and municipal Applicable Law, health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City on a City-wide basis and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Vendor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Vendor's obligations under this paragraph.

8. ASSETS.

8.1 No Asset Transfer. Except as may be specified on a Service Schedule, the City shall not transfer any assets to Vendor in connection with Vendor's provision of the Services. During the Term, should Vendor believe that additional City Property assets are required to provide the Services, Vendor shall so advise the City and, should the parties agree on terms and conditions of the acquisition, the City shall have the right, subject to applicable municipal procurement laws, to purchase and own the asset and then lease it to the Vendor for use in connection with the provisions of the Services.

8.2 The City Property; Right to Use. To the extent that use of any the City Property, including assets acquired as provided in Section 8.1, is required for Vendor's provision of the Services, upon request by Vendor, the City may grant to Vendor the right to use such Property solely for that purpose and the Charges between the Parties shall be reasonably adjusted to reflect the fair value of such use. Vendor may not use any the City Property for any purpose other than provision of the Services to the City or to the City's customers.

9. MANAGED AND ASSIGNED CONTRACTS. If there are any agreements between the City and any third-parties under which the City receives or provides recycling services, or

receives or provides services reasonably related to recycling services, and a Service Schedule provides for Vendor to manage those arrangements on behalf of the City, the City and Vendor may enter into an agreement for Vendor to receive an assignment of such agreements or manage them on the City's behalf. In such event, Vendor and the City shall execute and attach a schedule to the relevant Service Schedule substantially in accordance with the obligations and requirements set forth on Schedule 9, hereto, or such modified Schedule 9 pertaining to the relevant Service Schedule as the Parties may mutually agree, which outlines the terms and conditions of such arrangement, and which may include, but not be limited to, accounting, indemnity, renewal and termination, and agency provisions to govern the rights and obligations of the Parties.

10. TRANSITION AND TRIAL PERIODS; ACCEPTANCE.

10.1 Transition and Trial Periods. Each Service Schedule sets forth a period (the applicable "***Transition Period***") from the Transition Commencement Date relevant for such Service through the applicable Trial Commencement Date during which the parties shall prepare for transfer of the applicable Services from the City or the City's then-current service provider, to Vendor, and a period (the "***Trial Period***") beginning at the applicable Trial Commencement Date for the services covered by and as set forth on the Service Schedule and ending on the date (the "***Cutover Date***") that the Service Schedule is Accepted (as provided in Section 10.4). The Transition Period and Trial Period for each Service Schedule are together the "***Trial***" for such Service Schedule. Within ten (10) days after the start of each applicable Transition Period Vendor will prepare for the City review and approval a document (the "***Transition Plan***" for such Service Schedule) that encompasses components of the transition process for such Service Schedule. Each Transition Plan shall:

10.1.1 Include the overall transition and implementation process from and after the applicable Transition Commencement Date and show the manner of transition of each Service to Vendor.

10.1.2 Specify each party's responsibilities during the Transition Period and Trial Period.

10.1.3 Identify Vendor's transition team that will be in place for the Trial Period.

10.1.4 Identify reports to be completed by Vendor and furnished to the City during the Trial Period and thereafter.

10.1.5 Include a description of all data required for baseline calculations applicable to the Service Schedule and the methodology to be used to capture such data.

Such Transition Plan shall be promptly reviewed by the City and shall be either accepted promptly after its submission, or shall be rejected by the City in writing that sets forth in detail the reasonable reason(s) for such rejection. Thereafter, Vendor shall have ten (10) days to resubmit the revised Transition Plan, and the City shall have ten (10) days to either accept or reject such revised Transition Plan. If the Parties remain unable to agree on a Transition Plan, then either Party may invoke the dispute resolution process set forth in Section 30.

10.2 Responsibility for Services During the Transition Periods. The City or the City's then-current service provider is responsible for provision of the applicable Services during the relevant Transition Periods.

10.3 Trial Period. During the relevant Trial Period:

10.3.1 Vendor will provide the Services in accordance with the Service Levels set forth in the applicable Service Schedule, subject to the general requirements of the SLA.

10.3.2 Service Level Credits will not apply. Nothing in this Section 10.3.2 is intended to affect the City's remedies (including termination) for Vendor's failure to meet the Success Criteria.

10.4 Success Criteria; Acceptance. Each Service Schedule sets forth performance criteria for the applicable Services during the applicable Trial Period ("***Success Criteria***"). Upon Vendor's meeting the Success Criteria for a Service Schedule within the Trial Period, the City shall notify Vendor that the Services as performed during the Trial Period are "***Accepted***" and the applicable Cutover Date shall be deemed to occur. The date that all Trials are Accepted with respect to a particular Service Schedule is such Service Schedule's "***Acceptance Date***."

10.5 Overlapping Trials. Notwithstanding any other provision of this Agreement, if (i) Vendor is in material breach of its obligations under a Trial, or (ii) in such Trial Vendor cannot meet the Success Criteria for such Trial (by way of example, if in the Processing Services Trial Vendor is required to meet certain Success Criteria for three consecutive months, and in the final month of the Trial it has met the Success Criteria for only two months), the City may by written notice to Vendor defer any subsequent Trial Period until the breach is cured or all Success Criteria for the earlier Trial are achieved. Nothing in this Section 10.5 shall be deemed to require the City to provide additional time for Vendor to meet the Success Criteria for any Trial, or be deemed a waiver of any right of the City at Applicable Law or hereunder.

10.6 Trial Expenses. Except as otherwise identified in a Service Schedule or other Schedule, each party shall bear its own expenses of each Trial.

11. SECURITY.

Vendor acknowledges and agrees that through the normal course of providing the Services Vendor may have access to and be in possession of City Data and City Confidential Information. Accordingly, Vendor will take actions reasonable under the circumstances to prevent the intentional or inadvertent disclosure of City Data and City Confidential Information, which actions will be no less than what Vendor would take to prevent disclosure of its own similar information. For purposes of this Section 11, Vendor's employees include all partners, employees, subcontractors, and agents of Vendor. Vendor will establish procedures to facilitate protection of City Confidential Information. These procedures will include the following:

Each Vendor employee working on the City account with access to City Confidential Information will sign a personal non-disclosure agreement on a form reasonably acceptable to the City and Vendor.

City data (including City data created by Vendor as part of the Services) will be stored in a secured, partitioned area in Vendor's shared storage devices. Vendor warrants that City Confidential Information designated by the City as extremely confidential will in no event be available to any unauthorized person (including any employee of Vendor not authorized to have access to such information).

The Parties will review Vendor's security procedures as appropriate, but in no event less frequently than once in each Contract Year. The Parties intend Vendor's obligations in this Section 11 to supplement and not to limit Vendor's obligations under Section 16.

12. USE OF CITY FACILITIES.

If any Services Schedule shall require Vendor to perform Services that reasonably necessitate Vendor having access to or using, in any way, any facility owned or under the control of the City:

12.1 Access. The City shall provide Vendor with reasonably unencumbered access to the Premises and to all other areas or sites that are necessary for Vendor to perform the Services, subject to the City's reasonable and customary security and access controls, rules and regulations.

12.2 Limitation. Vendor's access to any Premises, other areas or sites, equipment, systems, or other property shall be subject to (i) all existing regulations, rules, or guidelines applicable to user access by the City's vendors or contractors, and (ii) such additional restrictions, as determined by the City in the reasonable exercise of its governmental and business judgment, as reasonably necessary to protect the integrity and security of City property. If during the Term the City makes any modification to any such regulations, rules, or guidelines in effect as of the Execution Date and such modification significantly increases Vendor's cost or risk of providing the Services, the Parties will use the Change Approval process in Section 20 to determine an Equitable Adjustment.

12.3 Prohibition. Under no circumstances may Vendor (i) use any Premises or services furnished by the City for any purpose other than providing Services to the City, or (ii) store on any Premises any goods that will be used for other Vendor customers. Without limiting the generality of the foregoing, Vendor may not use any Premises or services furnished by the City for provision of services to or on account of any other Vendor customer.

12.4 Hazardous Materials. If either Party becomes aware of the existence of Hazardous Materials at or near any Premises in proximity to personnel of the other Party, such Party shall give prompt written notice of such condition to the other Party. In the event that Vendor becomes aware that Hazardous Materials are present at any time at any Premises in proximity to Vendor's personnel, Vendor may cease performing the portion of the Services that is affected by the presence of such Hazardous Materials if, in the reasonable judgment of Vendor, Vendor's ability to perform such portion of the Services safely and properly might be materially and adversely impacted thereby. Vendor shall give prompt written notice to the City of any such determination. As between Vendor or the City, the Vendor shall be solely responsible for all matters relating to the investigation, detection, abatement, and remediation of

any Hazardous Materials present at the Premises to the extent the presence of such Hazardous Materials resulted from the conduct, acts or omissions of Vendor or its personnel, and Vendor shall not be liable or responsible for any expense incurred by the City in that regard except to the extent that the presence of the Hazardous Materials was caused by the conduct, acts or omissions of Vendor.

13. SERVICE LEVELS.

13.1 Service Levels. General service level requirements are set forth in Schedule 13.1 (the "***SLA***") and specific Service Levels are set forth in each Service Schedule with respect to the applicable Services. Vendor will perform the Services in accordance with and subject to the applicable Service Levels.

13.2 Service Level Credits. Following the applicable Acceptance Date, the City will receive the Service Level Credits set forth in Schedule 13.1 or the applicable Service Schedule as its sole and exclusive pecuniary remedy for any failure by Vendor to satisfy any Service Level. Service Level Credits will be applied as a credit on no later than the second Accounting Statement from Vendor to the City after the right to the Service Level Credit arises, unless this Agreement is terminated prior to application of the credit, in which event Vendor will provide the City cash refund.

14. COMPLIANCE WITH LAW; PERMITS.

14.1 Compliance with Applicable Law. Each party shall comply with all Applicable Laws in its performance of its obligations hereunder.

14.2 Permits. The City shall be responsible for obtaining all permits or authorizations necessary for discharge of the City Responsibilities. Vendor shall be responsible for obtaining all permits or authorizations necessary for its performance of the Services.

14.3 Safety. Vendor shall (i) establish and maintain safety procedures for the protection of Vendor's employees and all other persons at Vendor's facilities consistent with applicable laws, customary industry practices and applicable U.S. Department of Transportation and OSHA requirements, (ii) establish and enforce reasonable safeguards at Vendor's facilities for the safety and protection of any other person present at such facilities, (iii) comply with all Applicable Laws relating to the safety of persons or property at Vendor's facilities, and (iv) designate a qualified officer or senior manager of Vendor to be responsible for safety and the prevention of fires and accidents resulting from the performance of the Services or at any of Vendor's facilities, including that such designated person shall be the Vendor's primary liaison with any City, state or federal agency related to safety.

15. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSES.

15.1 Vendor Property. All Intellectual Property Rights in processes and products used by Vendor to provide the Services, and all other Intellectual Property Rights owned by Vendor prior to the applicable Transition Commencement Date or independently developed in connection with Vendor's activities unrelated to this Agreement during and after the Term, (collectively "***Vendor Intellectual Property***") are the property of Vendor or its licensor. Except

to the extent provided in Section 15.2, Vendor Intellectual Property shall include all inventions, improvements, methods, developments, software, documents, processes or products protected by Intellectual Property Rights that were created, made or conceived by Vendor or its employees or agents in the course of or as a result of the Services being provided under this Agreement.

15.2 City Property. All Intellectual Property Rights (i) in processes and products used by the City and all other Intellectual Property Rights owned by the City prior to the applicable Transition Commencement Date or independently developed in connection with the City activities unrelated to this Agreement during and after the Term or provided by the City under this Agreement (including any Marks proprietary to the City or its affiliates) or (ii) identified as a Deliverable from Vendor to the City in a Service Schedule (collectively "***City Intellectual Property***") are the property of the City or its licensor, except to the extent of any Vendor Intellectual Property incorporated into or used in connection with any Deliverable. Vendor shall have a non-exclusive, paid-up right and license to use, copy, modify, and prepare derivative works of the City Intellectual Property Rights identified in (ii) above to be used only in connection with the Services, and such license to automatically terminate upon the termination of this Agreement. City Intellectual Property shall include all inventions, improvements, methods, developments, software or documents protected by Intellectual Property Rights that were created, made or conceived by the City or its employees or agents (other than Vendor, or its employees, agents, contractors) in the course of or as a result of the Services being provided under this Agreement.

15.3 Joint Property. All improvements and derivative works of a Party's Intellectual Property shall be the property of such Party. To the extent that a product or process developed for use as part of the Services is an improvement or derivative work of both Parties' Intellectual Property ("***Joint Development***"), (i) such product or process will be jointly owned by the Parties and (ii) the Parties will agree, in the applicable Service Schedule or Change Order, or by separate agreement, upon each Party's respective rights to provide, sell, license or transfer of the Joint Development to third parties.

15.4 Vendor License to the City. Vendor grants to the City a worldwide, non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), fully paid, license to use as necessary any Vendor Intellectual Property incorporated into any Deliverable or the Services solely for the City's internal business purposes or in connection with the City providing recycling or related services to Customers, and not for any other commercial exploitation or resale. This license shall be perpetual with respect to Deliverables and until the end of the Term (and any termination assistance services) with respect to Services. The City may make use of the license to provide transition services for a reasonable period to a third party that acquires a business unit of the City or assumes the privatized responsibilities of any City department that had received the Services. On Schedule 15.4, Vendor shall list any Marks relevant to the Services that Vendor claims to be proprietary to Vendor, together with any registrations (federal or state) validly issued and still in effect with respect to each Mark. For any Mark shown on Schedule 15.4 for which there does not exist a state or federal validly issued and still in effect registration, the City acknowledges that Vendor claims ownership rights (but no registration) to such Mark. Without the City acknowledging that any Mark listed on Schedule 15.4 is owned by Vendor, Vendor hereby licenses to the City the use of the Marks listed on Schedule 15.4 during the term of this Agreement.

15.5 City License to Vendor. The City grants to Vendor a non-exclusive, fully paid license to use the City Intellectual Property made available to Vendor hereunder strictly for the purposes of providing the Services.

15.6 Rights in Data. All information and data of whatever nature that is (i) provided by the City to Vendor in connection with this Agreement (including those data incorporated into other documents by Vendor in connection with performing the Services or received by Vendor from third parties in connection with its administration of the Managed Contracts and New Contracts) or (ii) stored by Vendor as part of the Services (collectively "***City Data***"), including all Intellectual Property Rights included therein, is and shall remain the sole and exclusive property of the City. All reports that the City provides to Vendor in connection with this Agreement, or that are produced by Vendor specifically for the City under this Agreement, including all Intellectual Property Rights included therein, are and shall remain the sole and exclusive property of the City.

15.7 No Implied Licenses. The Parties do not intend in this Agreement to grant any licenses other than those expressly set forth in this Agreement or any Service Schedule, or to have anything in this Agreement or any Service Schedule considered to be evidence of any express or implied license. Without limiting the generality of the foregoing, neither Party grants to the other any right to use the other Party's Marks for any purpose other than as expressly provided in this Agreement or Service Schedule.

15.8 Residual Knowledge. Each Party shall be free to use its Residual Knowledge for any purpose, including use in the development, manufacturing, marketing, and maintenance of its products and services, subject only to its obligations with respect to use and disclosure set forth herein and any Intellectual Property Rights of the other Party. The term "***Residual Knowledge***" means information in non-tangible form that, without the intent to use the other Party's Confidential Information for a purpose prohibited by this Agreement, is retained in the unaided memories of those employees (i) of Vendor who have participated in providing the Services or (ii) of the City who have had access to Confidential Information of Vendor. Each Party may use the documents and other tangible materials containing the Confidential Information of the disclosing Party only for the purposes of this Agreement.

16. CONFIDENTIALITY.

16.1 Confidential Information. "***Confidential Information***" means all the information one Party receives from the other that by its nature is proprietary or confidential to the disclosing party. Confidential Information need not be marked as such.

16.2 Duty to Maintain Confidentiality. Subject to the provisions of the Texas Public Information Act, Chapter 552 of the Texas Government Code, each Party shall: (i) maintain the confidentiality of the Confidential Information of the other Party; (ii) take reasonable and appropriate steps to prevent the use, disclosure, dissemination, or copying of the Confidential Information of the other Party other than as necessary for such Party to perform its obligations under this Agreement; (iii) use the same care to prevent disclosure of the Confidential Information of the other Party to third parties as it employs to avoid disclosure, publication, or dissemination of its own Confidential Information of a similar nature, but in no event less than a

reasonable standard of care; (iv) use the Confidential Information of the other Party solely as necessary in connection with this Agreement; (v) not acquire any express or implied right or license to any Intellectual Property Right or other proprietary right in or to, or assert any lien against, the Confidential Information of the other Party solely by virtue of its disclosure; (vi) inform its employees, agents, and subcontractors who perform duties with respect to this Agreement about the restrictions with regard to Confidential Information set forth in this Section 16.2; and (vii) notify the other Party promptly in the event of any use, disclosure, or loss of Confidential Information of the other Party other than as permitted by this Agreement.

16.3 Permitted Disclosures. Notwithstanding the restrictions of Section 16.2 each Party may disclose Confidential Information of the other Party to its employees, agents, vendors and subcontractors who have: (i) a bona fide need to know such Confidential Information in order to perform their assigned duties hereunder or to enable Vendor to provide the Services; and (ii) a legal or contractual duty to protect the Confidential Information that is no less than the obligations of confidentiality imposed upon such Party hereunder. A Party receiving Confidential Information of the other Party assumes full responsibility for the acts or omissions of its employees, agents, and subcontractors with respect to such Confidential Information. Notwithstanding anything to the contrary contained elsewhere in this Agreement, either Party may disclose the existence of this Agreement, or the terms of this Agreement, to the extent such disclosure is required to enforce the terms of this Agreement. In the event of any such disclosure, the disclosing Party shall request confidential treatment of this Agreement and, in particular, the provisions of this Agreement related to Charges and other compensation payable hereunder, unless the provisions of the Texas Public Information Act forbid such confidential treatment.

16.4 Required Disclosures. Either Party may disclose Confidential Information to the extent disclosure is required by Applicable Law or legal process. The Party proposing to disclose the other party's Confidential Information shall use reasonable efforts consistent with Applicable Law to maintain the confidentiality of such Confidential Information, including (i) giving the other Party prompt notice in order that the other Party has a reasonable opportunity to intercede in such process to contest such disclosure; and (ii) reasonably cooperating with the other Party to protect the confidentiality of such Confidential Information. The Party that discloses such Confidential Information shall use reasonable efforts to obtain, with the other Party's reasonable cooperation, a protective order or otherwise protect the confidentiality of such Confidential Information except to the extent that such protection is unavailable under the Texas Public Information Act.

16.5 Injunctive Relief. Each Party acknowledges that any breach of any provision of this Section 16.5 by a Party, or by its employees, agents, or subcontractors, may cause immediate and irreparable injury to the other Party that cannot be adequately compensated for in damages, and that, in the event of any such breach and in addition to all other remedies available at Applicable Law or in equity, the injured Party shall be entitled to seek injunctive relief from any court of competent jurisdiction, without bond or other security or undertaking.

16.6 Exclusions. This Section 16 shall not apply to information that is: (i) public information subject to Chapter 552 of the Texas Government Code, (ii) in the public domain; (iii) received by a party from a third party that is not under any confidentiality restrictions; or (iv)

independently developed by the receiving Party in connection with activities not directly related to this Agreement.

16.7 Maintenance of Certain Records by Vendor. Neither Vendor nor its Permitted Subcontractors shall be obligated to maintain any records in accordance with Chapter 552 of the Texas Government Code, provided, however, Vendor acknowledges that all or certain reports filed Vendor with the City may be subject to open records requests under Chapter 552.

17. ASSIGNMENT AND SUBCONTRACTING.

17.1 Limitation upon Assignment. This is a personal services contract. Neither Party shall assign, delegate, sell, or otherwise transfer or dispose of, whether as a result of a single transaction or a series of related transactions, this Agreement or any of such Party's rights, duties, or obligations hereunder without the prior written consent of the other Party, except that:

17.1.1 Vendor may assign its rights under this Agreement, including any amounts due or to become due to it under this Agreement, without the City's consent, provided that (i) the City payment to an assignee shall relieve the City of its corresponding obligation to Vendor for the payment in question, (ii) any such assignment does not have the effect of expanding the City's obligations, (iii) Vendor promptly notifies the City of such assignment (including providing a direction letter to the City as to the place and payee for any payments), and (iv) such assignment does not relieve Vendor of any of its obligations hereunder, or its performance obligations under a Service Schedule (including the right of the City to receive Service Level Credits based upon the performance of Vendor).

17.1.2 City may assign this Agreement, in whole and not in part, without Vendor's consent, to any entity created by the City as a local government corporation pursuant to Texas Transportation Code Section 431.101 et. seq., or similar non-profit corporation permitted to be formed and owned, in whole or in part, by a Texas Home-rule Municipality ("***LGC***") or any department of the City that is receiving the Services, subject to the City or the assignee's bearing or reimbursing Vendor for all reasonable out-of-pocket costs incurred by Vendor in connection with the assignment. If, in accordance with the preceding sentence, the City desires to assign this Agreement, it shall give Vendor at least thirty (30) days' advance written notice thereof (identifying the proposed assignee) prior to any such assignment becoming effective.

Any assignment or transfer, or attempted assignment or transfer of this Agreement, including a transfer by operation of law, in contravention of this Section 17 shall be void *ab initio* and of no force or effect without the written consent of the Parties.

17.2 Subcontracting. Except to the extent set forth in this Section 17.2, or as the City may otherwise agree in writing, Vendor will not delegate or subcontract any material portion of its obligations under this Agreement. If Vendor proposes to subcontract any material portion of Vendor's obligations under this Agreement (a "***Material Subcontract***") to a third party, Vendor will clearly set forth in writing to the City: (i) the specific portions of the Services that Vendor proposes to subcontract; (ii) the scope of the proposed subcontract; (iii) the identity, background, and qualifications of the proposed subcontractor; and (iv) the type of contract that exists or will exist between Vendor and the subcontractor. For each Material Subcontract, the City will have

the right reasonably to approve or disapprove the use of the proposed third party subcontractor and only Vendor, its Direct Employees, and subcontractors approved by the City (each a "***Permitted Subcontractor***") shall perform the Services hereunder. The City approves each subcontractor named in any Service Schedule with respect to the Material Subcontract set forth therein as Permitted Subcontractor. With respect to any obligations of Vendor under this Agreement performed by Permitted Subcontractors, Vendor will remain responsible for such obligations to the same extent Vendor would be responsible for Vendor's employees. A Permitted Subcontractor's default or inability to perform shall not constitute Force Majeure, except to the extent such default or inability results from Force Majeure.

17.3 Customers of the City. Except where expressly prohibited in a Service Schedule, the City may resell, re-provide, or otherwise make available any Services to a third party (a "***Customer of the City***"), by means of a service agreement or similar arrangement between the Customer of the City and Vendor. In addition, the City may make the Services available to any of its Affiliates by means of a service agreement or similar arrangement between the Affiliate and the Vendor. The City may not expand or alter the terms of this Agreement or the nature of Vendor's obligations without the prior written approval of Vendor, and shall promptly notify Vendor of each third party that becomes a Customer of the City. In the event that Vendor's obligations to any Customer of the City would be able to survive any termination of the applicable Service Schedule, regardless of how such termination would arise, then Vendor shall have the right to review and approve the terms, conditions and rates for any service agreement or similar arrangement by which the Customer of the City would receive the Services.

17.4 Binding on Successors. This Agreement is binding upon the Parties and their permitted successors and assigns.

17.5 Limitation. Nothing in Sections 17.2 and 17.3 shall be construed (i) to prohibit or otherwise limit the use by the City of third party service providers, or (ii) to apply to Assigned Contracts, Managed Contracts, or New Contracts, which shall be governed by Section 9.

18. AUDIT RIGHTS.

18.1 General. In addition to the City's audit rights as set forth in the individual Service Schedules and Schedule 6.1, upon commercially reasonable notice to Vendor and during normal business hours, the City has the right to audit and review the records of Vendor, any Permitted Subcontractor or a third party that relate to: (i) any variable Charges charged to the City hereunder; (ii) the City consumption of the Services, (iii) the City use of Service Request or Project hours (as defined in the Service Schedules); (iv) any Service Level Credits payable or paid to the City; (v) any payment or credit obligation hereunder. Such audit or review (a) is subject to the terms and conditions in Sections 18.2, 18.3 and 18.4. City's right to audit and review the records of Vendor does not entitle the City to review rates charged by third-party providers to Vendor for any goods or services except: (i) in connection with any Managed Contracts, New Contracts, or where such third-party provider is an Affiliate of Vendor; or (ii) where Vendor utilizes a third-party provider with respect to activities other than the provision of Services, and there is a significant disparity as to the rates Vendor receives from such third-party provider between goods or services used in the performance of the Services and substantially similar goods and services used for other purposes. The City may conduct such audit and

reviews itself or with the assistance of a third party organization (provided that the third party organization executes a confidentiality agreement reasonably acceptable to Vendor), at the City expense, no more than once per calendar quarter, provided that all such audits or reviews must be conducted contemporaneously. Vendor will make available, at its Austin area offices, to the City or the City designated representatives requested information relating to such audits or reviews on a timely basis, and will cooperate with the City to the extent reasonably necessary to fulfill this obligation. All audits and reviews performed pursuant to this Section 18 and elsewhere in this Agreement will be performed in a manner intended to minimize the disruption to the Parties' respective businesses.

18.2 Limitations on the City Audit Rights. In conducting audits and investigations pursuant to this Section 18, the City will not (i) be entitled to review any Confidential Information or other information about Vendor's business or any third party not directly related to this Agreement or (ii) materially interfere with Vendor's ability to perform its obligations under this Agreement or to conduct its other operations in the ordinary course of business.

18.3 Expenses. The City will bear its own expenses relating to any audit performed pursuant to this Section 18; provided, however, that Vendor will reimburse the City any reasonable expenses incurred by the City in connection with any audit that results in the correction of an error by Vendor that resulted in an overcharge to the City or underpayment to the City of an amount equal to or greater than five percent (5%) of the net Charges that were subject to such audit for the period audited. The City will compensate Vendor for any reasonable costs associated with auditing or inspection demands that Vendor reasonably identifies to the City as excessive upon submission of supporting documentation to the City.

18.4 Review. Vendor and the City will meet promptly after the issuance of any audit report by the City or Vendor to review the report and to agree upon the appropriate manner to address any changes proposed by the audit report. The City and Vendor shall develop mutually acceptable operating procedures for the sharing of audit and regulatory findings and reports produced by auditors or regulators of either party. Vendor may obtain an audit from an additional source at Vendor's expense.

18.5 Adjustments. If any audit pursuant to this Section 18 indicates the need for adjustments in the Charges owed either Party in connection with the Services, the audit results and recommendations will be used as the basis for the negotiation of Equitable Adjustments. Any such adjustments will be paid by or credited to the appropriate Party within sixty (60) days after the Parties' written agreement as to the Equitable Adjustments.

19. RELATIONSHIP MANAGEMENT.

19.1 Prohibition Against Personal Interest In Contract. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Vendor acknowledges that if it takes any action, directly or indirectly, that results in a violation of this provision, the City at its sole discretion may void this Agreement.

19.2 Vendor's Service Delivery Manager. Promptly after the Execution Date, Vendor shall designate in writing to the City the name of its employee who will serve as Vendor's "***Service Delivery Manager***" for the Services in connection with a Service Schedule. A single Direct Employee of Vendor may be the Service Delivery Manager with respect to more than one Services Schedule, but each Service Delivery Manager shall be an experienced, trained and qualified manager with respect to the Services in question and shall report directly to the Vendor Senior Officer. The Service Delivery Manager shall manage all Vendor personnel who are assigned to the performance of such Service Schedule. While assigned to such position, the Service Delivery Manager shall reside in the same general geographical area as that in which the Services are primarily performed under such Service Schedule. The Service Delivery Manager shall: (i) act as the primary liaison between the City and Vendor; (ii) have overall responsibility for directing and coordinating all of Vendor's activities under the applicable Service Schedule and shall be vested with all necessary authority to fulfill that responsibility; (iii) provide guidance to the City on issues that relate to Vendor's organizational structure; (iv) provide the City with insight regarding Vendor's business strategy; and (v) assist the City in appropriately prioritizing both the City's business needs and any projects undertaken hereunder. Vendor shall devote at least a substantial portion of each Service Delivery Manager's working time to the performance of the functions and responsibilities of the Service Delivery Manager described in this Section 19 and elsewhere in this Agreement.

19.3 City Liaison. Promptly after the Execution Date, the City shall designate in writing to Vendor the name of its employee who will serve as the City liaison (the "***Liaison Officer***") who shall: (i) act as the primary liaison between the City and Vendor; (ii) have overall responsibility for directing and coordinating all of the City activities hereunder and shall be vested with all necessary authority to fulfill that responsibility; (iii) provide guidance to Vendor on issues that relate to the City organizational structure; (iv) provide Vendor with insight regarding the City business strategy; and (v) assist Vendor in appropriately prioritizing both the City's business needs and any projects undertaken hereunder.

19.4 Regular Meetings. The Service Delivery Manager and the Liaison Officer shall confer regularly (at least once a month) until the first Reset Date to discuss the performance of the Services and any problems that have occurred or that are anticipated. Such conference may be in the form of face-to-face meetings, telephone or video conference or, upon the mutual consent of both Parties, by e-mail exchange. At each Reset Date, the Service Delivery Manager and the Liaison Officer shall designate in writing the frequency of the regular meetings until the next Reset Date, but in no event shall such frequency be less than monthly.

19.5 Management Report. By the fifteenth (15^{th}) day of the month following the reporting period, the Service Delivery Manager shall deliver to the Liaison Officer a management report containing the various sections, provisions, contents, and material information indicated or described in each Service Schedule (each, a "***Management Report***"). Each Management Report shall summarize the current status of the performance of the applicable Services and any ongoing projects, describe any problems encountered during the previous month, and identify any open issues that require either discussion by the parties or any decisions to be made, or actions to be taken, by the City. The Liaison Officer shall provide the Service Delivery Manager with any information or assistance reasonably requested for the

preparation of any Management Report and shall facilitate the scheduling of any meetings that may be necessary or appropriate to follow up on any issues in any Management Report.

19.6 Steering Committee. Within thirty (30) days after the Execution Date, each party shall designate three (3) representatives, in the case of Vendor including an executive, and in the case of the City, including either the City Manager, Assistant City Manager, or the head of either the Solid Waste or Public Works departments, to a committee (the "***Steering Committee***") that thereafter throughout the Term shall address, and be responsible for defining and implementing a structure for handling, any matters of governance and administration that may arise in connection with this Agreement, including matters involving: (i) monitoring the general progress of the performance of the Services; and (ii) discussing and attempting to resolve problems referred by the Service Delivery Manager or the Liaison Officer. Each Party may upon reasonable notice to the other party replace its Steering Committee members, at any time, in its discretion, if the replacement is an employee with comparable knowledge, experience, and familiarity with this Agreement, provided that at all times, at least one member must be a senior executive of the Party and that at least one representative of Vendor is the Vendor Senior Officer. Any other replacement is subject to the other Party's consent, which shall not be unreasonably withheld or delayed. The Steering Committee shall meet quarterly, in person, at such place and time as determined by the Parties' agreement.

19.7 Quarterly Meetings. The Liaison Officer shall meet with the Service Delivery Manager quarterly prior to each Steering Committee meeting to produce a joint report to be delivered to the Steering Committee in advance of its meeting, which report shall discuss, at a minimum, the performance of the Services to date and any problems or other events that have occurred or that are anticipated.

19.8 Strategic Planning Process.

19.8.1 Services Strategic Plan. The City and the Vendor shall create a plan (the "***Services Strategic Plan***") on a rolling 3-year basis, that anticipates additions to or reductions in Services Vendor is to supply the City during the Planning Period (defined below), based upon trends, markets, technological improvements, facility developments, growth in the City's population, needs of residents of the City, market changes and new market opportunities. The Services Strategic Plan is a non-binding roadmap designed to guide the planning efforts of the Vendor and the City throughout the Term of this Agreement, and shall, to the maximum extent permitted by Applicable law shall be kept confidential and proprietary by both Parties hereto, except that the City may share its retained knowledge from the Services Strategic Plan (but not Vendor's specific budgets, financial information or planned acquisitions) with the City's staff, its consultants, and with any other vendor executing an agreement substantially similar to this Agreement.

19.8.2 Strategic Planning Process. Each calendar year, beginning with the year starting on January 1st of the year following the year in which the first Cutover Date under any Services Schedule occurs hereunder, the Steering Committee shall meet during the months of April, May or June (as the City shall designate), on a date mutually convenient to the Parties, for the purpose of discussing the strategic planning for the expansion or contraction of the Services for the succeeding three (3) years (the "***Planning Period***"), and the revision to any then-existing

Services Strategic Plan. Approximately 2 weeks prior to the date on which the Parties are to meet, the City's Liaison Officer shall deliver (i) the prior year's Services Strategic Plan and (ii) a list of items to be discussed at such meeting, including any new Services or Service Schedules the City anticipates may become applicable during the Planning Period. During such 2-week period, Vendor shall suggest additional Services it would like to begin providing, as well as prospective capital purchases to enhance the Services and the revenue earned by the City hereunder. At the meeting of the Steering Committee, the Parties shall discuss and then draft a revision to the Services Strategic Plan to guide the Parties' internal planning and budgeting process for the Planning Period. Notwithstanding the foregoing, in no event shall the Vendor be entitled to rely on the Services Strategic Plan as a commitment from the City as to any future Services to be provided by the Vendor hereunder (whether under an existing Services Schedule or the execution of a new Services Schedule), or as to any pricing or volume changes or Service Level changes under an existing Services Schedule at the next Reset Date.

19.9 Other Service Providers. If the City executes a Master Agreement with a new service provider other than Vendor and if the terms of that Master Agreement materially differ from those of the Master Agreement executed by Vendor, Vendor may request (and the City will not unreasonably deny) amendment to the Vendor's Master Agreement to conform the terms of the Vendor's Master Agreement to the terms of the Master Agreement executed by the new service provider. A proposed amendment requested by Vendor under this Section 19.9 must meet the requirements of Section 20.2 as if the requested amendment were a Change requested by Vendor under that section. The terms of this Section 19.9 do not apply to Service Schedules.

20. CHANGES.

20.1 Change Initiated by the City.

20.1.1 General. At any time during the Term, the City may request a change or request to modify an individual Service, the scope of a Service Schedule or the provision by Vendor of a new Service Schedule for additional services related to recycling and its zero waste plan (a "***Change***") by notifying Vendor of its Change Request. The City-requested Changes may be in response to a Significant Event.

20.1.2 Innovation. If during the Term, the City proposes a Change that modifies the means by which Vendor will provide a Service and requires an investment to implement (an "***Innovation Change***"), the Parties will negotiate in good faith to resolve (i) whether the Innovation Change will be implemented, (ii) each party's responsibilities in implementing the Change, (iii) which party shall make the necessary investment, (iv) ownership of any components of the Innovation Change, (v) each Party's right to use the Innovation Change or any component thereof independently of the Services, (vi) a timetable for implementation, and (vii) Equitable Adjustments to this Agreement or any affected Service Schedule. In resolving these issues it is understood that if a Party directly bears the entire cost of an Innovation Change (including that there is no Equitable Adjustment to Charges under this Agreement), such Party shall own such Innovation Change and the other party shall have no right to use such Innovation Change independently of this Agreement. Subject to Vendor's good faith duty to negotiate any Innovation Changes sought by the City, Vendor may decline to accept any such proposed

Innovation Change if a substantial cost would be incurred by Vendor in agreeing to such Innovation Change.

20.2 Change Initiated by Vendor. Vendor may from time to time during the Term, including during the Transition Periods, review the operations required to support the City and may recommend to the City re-engineering of particular procedures, processes, and tools, or otherwise submit a Change Request. Vendor shall (i) present the proposed Change to the City; (ii) discuss with the City the requirements of implementing the proposed changes, including any changes to the City business methods, practices, or policies and the Parties' respective costs; and (iii) identify the projected benefits to both the City and Vendor. Except upon an emergency basis or a sudden and rapid change in market conditions or technological advancements, Vendor shall, in good faith, make reasonable efforts to limit any Changes proposed by Vendor to be accordance with the applicable and most-recent Services Strategic Plan developed by the parties pursuant to Section 19.8. The Parties shall discuss the proposed Change and possible modifications prior to granting approval, and work in good faith to determine the costs, benefits, and proper level of commitment by both Vendor and the City for implementing any such re-engineering project or Change. The City is under no obligation to accept any Change proposed by Vendor that (i) would increase the price for any Services, reduce any revenue that the City is entitled to under this Agreement, or require the City to make a capital investment, (ii) is inconsistent with the City's previously adopted strategies or public policies, or (iii) entails a change in the City practices that, in the exercise of the City's reasonable judgment, would materially and adversely impact the City's business or the benefits to be obtained by its residents under this Agreement.

20.3 Change Required by Mistake or Inadvertence. If a particular Service or Deliverable is inadvertently omitted or not clearly specified in a Service Schedule but the Service or Deliverable is reasonably determined by either Party to be operationally necessary and is verified to have been performed by the City within the 12 months before the execution of the applicable Service Schedule, such Service or Deliverable will be provided by the Vendor pursuant to a Change, but the Parties shall use the procedures set forth in this Section 20 to modify the applicable Service Schedule and to allocate fairly the responsibility for any additional cost incurred by Vendor as an Equitable Adjustment resulting from such Change.

20.4 Negotiations. Vendor shall furnish data appropriate for the City to evaluate any proposed Change Request (including, where appropriate, Benchmark Results) and the respective benefits to the Parties. In the event that the City initiates a Change Request, the City shall furnish such information as is necessary for Vendor to provide a response. In all events, the Parties shall work promptly and in good faith to determine the costs, benefits, and proper level of commitment by both Vendor and the City for implementing any proposed Change and to agree on such terms and conditions to be set forth in a Change Approval. Change Request procedures are set forth in Schedule 20.43.

20.5 Nature of Adjustments. If either Party is of the opinion that a Change materially alters its costs of performance of this Agreement or the scope of its obligations under this Agreement, the Parties will negotiate revisions to this Agreement or an affected Service Schedule that reflect such Change ("***Equitable Adjustments***"). Equitable Adjustments may increase or decrease either Party's obligations, duties, or Charges under this Agreement, and may

include modification of Service Levels, delivery times for Services, or either Party's responsibilities in respect to a particular Service.

20.6 Dispute Resolution. If the Parties are unable to agree (i) on the terms of an Equitable Adjustment; or (ii) whether any of the conditions in Section 20.1 through Section 20.5 has been met; within thirty (30) days after either Party gives written notice to the other Party that such a disagreement exists, then either Party may invoke the dispute resolution procedures set forth in Section 30 in order to resolve the dispute, and, if the use of the dispute resolution procedures does not result in agreement, litigation.

20.7 Changes May Not Include Amendment to Terms and Conditions. Notwithstanding any other provision of this Section 20, the Change and Change Approval process in this Section 20 shall be used only to modify the scope of Services or related Changes, and may not be used to modify the terms and conditions in the body of this Agreement; provided, however, that the Parties may elect to amend this Agreement to the extent necessary to be consistent with any Change. The City and Vendor acknowledge that it is the City's intent that initially this Agreement will also be executed with other vendors providing similar services. The City shall use its reasonable good-faith efforts to provide Vendor with written notice and a copy of any amendment to the terms and conditions of this Agreement (but not those set out in any Service Schedule unless such terms and conditions shall be considered public information which may not be withheld from disclosure under any of the exceptions set forth in Chapter 552 of the Texas Government Code) each time it is amended with another vendor. Should the City, acting in good faith, fail or neglect to provide any such amendment to Vendor, the City shall promptly make such amendment to Vendor upon Vendor's request or the discovery by the City of its failure or neglect.

20.8 Change in Applicable Law.

20.8.1 If during the Term there is a change in Applicable Law directly affecting the cost or risk of providing a particular Service, which cost would have been borne by the City if the City had been providing the Service, or directly affecting the revenue generated from the Services in which the City is entitled to and share for a credit against other Charges, the Parties will negotiate an Equitable Adjustment in accordance with the provisions of this Section 20, it being understood that the City will bear any additional cost to or loss in revenue by Vendor occasioned by such change in Applicable Law but remain a share in or credit for any additional revenue created as a result of such Charge.

20.8.2 Except for Changes initiated by the City for its convenience, Vendor shall bear the costs and risks of any change in Applicable Law that affects Vendor's business or the provision of the Services generally including changes in taxes on its gross or net income, such as the Texas Margin Tax or similar franchise-type taxes, or for the right to conduct business in a particular location, if such cost would not have been borne by the City if the City had been providing the Service.

20.8.3 If a change in Applicable Law imposes, removes, or modifies a fee or other levy imposed by a governmental authority other than on the gross or net income of Vendor or as a cost for the right to conduct business in a particular location (a "***Levy***") that the parties

used to calculate Charges under this Agreement, or which is passed through to the City, or which is included in any formula used to calculate Non-Standard Charges, the parties shall revise the applicable charges or formula in a manner consistent with the then-existing calculation of charges to avoid a windfall to either party as a result of the new, eliminated, or modified Levy.

20.8.4 If a change in Applicable Law (a) imposes Sales Taxes on the City acquisition or use of any Service, and (b) materially increases the City cost to acquire the Services hereunder, and (c) as a result the price of the Services is not reasonably competitive with the City providing the Services itself, then, notwithstanding any other provision of this Agreement (including Section 6.9 and this Section 20.8), the City and Vendor shall use reasonable efforts to negotiate an Equitable Adjustment to this Agreement. If the Parties are unable to reach an agreement as to an Equitable Adjustment the terms within sixty (60) days, either Party may then terminate this Agreement upon written notice to the other Party, without either Section 22.2.3 or Section 22.4, hereunder, applying.

21. CUSTOMER SATISFACTION AND BENCHMARKING.

21.1 Initial City Satisfaction Survey. If indicated in the applicable Service Schedule that a customer satisfaction survey is applicable, then during the ninety (90) day period after the applicable Transition Commencement Date, Vendor shall submit to the City, for the City's approval, the identity of an unaffiliated third-party qualified by experience and training that shall conduct a initial customer satisfaction survey of Residents or other affected End-Users. Upon the City's approval of such third party, Vendor shall engage such third party to conduct a initial customer satisfaction survey as approved by the City from a statistically meaningful sample of Residents (or other affected End-Users, if the applicable Service Schedule is not primarily related to city-wide activities for Residents) approved by the City (the "***Initial City Satisfaction Survey***"). The Initial City Satisfaction Survey shall be (1) of the content and scope set forth in Exhibit 21.1, (2) administered in accordance with the procedures set forth in Exhibit 21.1 and (3) subject to the City's approval. The results of the Initial City Satisfaction Survey shall be the baseline for measurement of the performance improvements described in Section 21.2.

21.2 City Satisfaction Survey.

21.2.1 No later than 360 days prior to a Reset Date, Vendor shall, upon the City's request, engage an unaffiliated third-party qualified by experience and training and approved by the City to conduct an End-User satisfaction survey in respect of those aspects of the Services designated by the City. The survey shall, at a minimum, cover a representative sampling of End-Users and senior management of the City, in each case as specified by the City. The timing, content, scope, and method of the survey shall be consistent with the Initial City Satisfaction Survey and subject to the City's approval.

21.2.2 In the event that the City or Vendor disputes the results of the customer satisfaction survey, the City may engage a third party, reasonably acceptable to Vendor, to conduct the customer satisfaction survey pursuant to this Section 21.2.2. The results of such survey shall be binding on the Parties.

21.3 Benchmarking Overview. The Benchmarking Process shall be conducted by the Benchmarker only in the event of failed good-faith negotiations between the City and Vendor. In the event (1) a Benchmarker is no longer providing the services required to conduct the Benchmarking Process, (2) the City and Vendor agree that the Benchmarker should be replaced or (3) the City and Vendor determine that another Benchmarker would be needed to take advantage of another system or methodology utilized by such Benchmarker to conduct the Benchmarking Process, the City shall promptly designate a replacement Benchmarker. The reasonable fees and expenses charged by the Benchmarker shall be divided and paid in equal amounts by the Parties.

21.4 Benchmarking Process.

21.4.1 Generally. If necessary, the Benchmarker shall conduct the Benchmarking Process with respect to a specific Service Schedule during the one hundred eighty (180) day period ending no later than six (6) months prior to an applicable Reset Date. Within ninety (90) days after each Reset Date, or such later date agreed upon by the Parties, the City and Vendor shall (1) agree upon the period during which the Benchmarking Process shall be conducted prior to the next Reset Date, and (2) review the Benchmarking Process used prior to the preceding Reset Date and adjust the Benchmarking Process as may be agreed upon by the Parties for the upcoming Reset Date.

21.4.2 Insurance. In the event that in accordance with the procedures set forth in Section 28.1, the City has requested that Vendor provide any insurance policy with policy limits greater than the policy limits then in force, and Vendor asserts that such the policy limits are unreasonable, then Vendor shall request and pay for the costs of Benchmarker to determine if the proposed policy limits by the City are unreasonable, and if the Benchmarker determines that such proposed policy limits are unreasonable, then the City shall reimburse Vendor for the reasonable costs of the Benchmarker, and shall establish the policy limits at such amounts as determined by the Benchmarker to be reasonable, but in no event lower than the policy limits then in force.

21.5 Benchmark Results Review Period and Adjustments. City and Vendor shall review the Benchmark Results during the Benchmark Review Period. In the event the Steering Committee agrees with the Benchmark Results, the terms (e.g., the Charges or the Service Levels) Equitable Adjustments to this Agreement shall be made accordingly.

22. TERMINATION.

22.1 Termination for Cause by the City.

22.1.1 Termination Events. The City may terminate this Agreement for cause upon the occurrence of any of the following events:

22.1.1.1 Except as otherwise provided in this Section 22.1.1, Vendor breaches any of its material duties or obligations under this Agreement or a Service Schedule, which breach is not cured within thirty (30) days after written notice thereof.

22.1.1.2 Vendor performs its duties and obligations under this Agreement or a Service Schedule in such a manner that:

22.1.1.2.1 Vendor fails to achieve any two (2) particular Services-related Services Levels for three (3) consecutive months following the applicable Acceptance Date;

22.1.1.2.2 Vendor fails to achieve a particular Services-related Service Level more than three (3) times per month for three (3) consecutive months following the applicable Acceptance Date; or

22.1.1.2.3 Vendor performs below a CRITICAL Service Level for any Services-related Service Level more than once following the applicable Acceptance Date;

and in any of the preceding three clauses, without opportunity to cure.

22.1.1.3 Except with respect to breaches of any Service Levels (which breaches are governed by Section 22.1.1.2), Vendor commits at least three (3) material breaches of the same, material obligation to the City hereunder within any six (6) month period, and is unwilling or unable to remedy the breach after a reasonable opportunity to do so.

22.1.1.4 Vendor fails to perform any duty or obligation under this Agreement or a Service Schedule and such failure constitutes a Critical Failure, which breach is not cured within thirty (30) days after written notice.

22.1.1.5 Vendor fails to perform any duty or obligation under this Agreement or a Service Schedule and such failure constitutes a Safety Failure, without an opportunity to cure such breach.

22.1.1.6 Vendor without reasonable cause fails to make timely payment to a service provider or seller of goods under a Managed, Assigned, or New Contract, and such failure results in such counterparty giving written notice of suspension, discontinuance or termination of any service or use of goods from such counterparty, provided that: (i) such failure does not result from the City's failure or refusal to pay any corresponding amount to Vendor; (ii) the suspension, discontinuance, or termination is not requested or otherwise initiated by the City; and (iii) Vendor does not cure such failure prior to the suspension, discontinuance, or termination of the service or use of goods.

In the event that the City seeks to terminate this Agreement for cause without giving Vendor the opportunity to cure, the matter shall be immediately escalated to the Vendor's CEO and the City Manager for their review and good faith attempts at resolution. If the parties' respective executives fail to resolve the matter within thirty (30) days, despite their good faith efforts, then the effective date of the termination shall be the date set forth in the City notice of termination (subject to the terms of Section 22.1.2 below).

22.1.2 Notice. The City will provide to Vendor written notice of termination for cause that specifies a date for termination, which date will not be less than thirty (30) days or more than one hundred eighty (180) days after the date of such notice.

22.1.3 City Obligations. If the City terminates this Agreement for cause or because Vendor becomes Insolvent, the City will be relieved of any and all of the City's obligations arising from or relating to this Agreement, except for the City's confidentiality obligations under Section 16, its obligations under Section 22.9, its indemnification obligations hereunder, and its obligation to pay Vendor for Services rendered prior to the effective date of such termination.

22.1.4 Limitation. Vendor's non-performance of Vendor's obligations under this Agreement will not be grounds for termination of this Agreement by the City if and to the extent it is caused by Force Majeure (except as provided in Section 26.1) or the failure of the City to perform the City's Responsibilities, so long as Vendor provides the City with reasonable notice of any such nonperformance and Vendor uses commercially reasonable efforts or, if authorized by the City, takes such additional actions (at the City's expense) to perform Vendor's obligations notwithstanding such failure to perform the City's Responsibilities.

22.2 Termination for Cause by Vendor.

22.2.1 Termination for Non-Payment. Vendor may terminate this Agreement for cause if the City fails to pay Vendor undisputed amounts due under such a Service Schedule as set forth in an accurate and timely delivered monthly Accounting Statement, provided that the City continues to fail to make such payment or provide evidence of the dispute within ten (10) days after the City receipt of Vendor's written notice of termination for cause. Upon such termination the Party with the net payment obligation as of the time of termination shall be responsible for paying any unpaid amounts that accrue prior to or as a result of such termination, plus interest, if not timely paid.

22.2.2 Termination for Other Breach. Vendor may terminate this Agreement if the City breaches any of its material duties or obligations hereunder (other than by the failure to pay amounts that are not disputed in good faith in accordance with Section 6.4), which breach is not cured within thirty (30) days after notice thereof, unless a longer time is specifically provided for curing such breach by another section of this Agreement or as expressly set forth in the relevant Service Schedule.

22.2.3 Liquidated Damages. If Vendor terminates a Service Schedule or this Agreement in its entirety for cause, the City shall pay to Vendor the liquidated damages set forth on the applicable Schedule 22.2 relevant for each Service Schedule then being terminated. The Parties agree that such liquidated damages are not a penalty, and intend such liquidated damages to include Vendor's mobilization and demobilization costs (including costs related to termination of third party agreements), recovery of unamortized or unrecovered investment, opportunity and lost opportunity costs, employee-related costs, and a portion of anticipated profits from this Agreement, and that such damages shall constitute Vendor's sole damages, to the exclusion of all others for the City's breach giving rise to termination of the relevant Service Schedule or this Agreement as a whole. Vendor may seek recovery of such liquidated damages first from the

City's Solid Waste Enterprise Fund and then from the general fund if the Solid Waste Enterprise Fund is inadequate. Should the City fail to pay the liquidated damages in full, Vendor shall be entitled to seek any other remedy at law or in equity, to the extent permitted according to the Texas Constitution or Texas law. If the City does not promptly pay Vendor the liquidated damages, the City shall be liable for Vendor's attorneys' fees and costs of collection.

22.3 Intentional Acts. Solely for purposes of a Party's right to terminate this Agreement under this Section 22 and for purposes of determining a Party's intentional breach for the purposes of Section 24, the intentional act of a Party's employee, subcontractor, or agent shall not be deemed the intentional act of that Party so long as that Party (i) undertook all commercially reasonable efforts in hiring or engaging such employee, subcontractor, or agent, (ii) did not know and had no reasonable basis to believe such employee, subcontractor, or agent committed or was likely to commit the act constituting the breach; and (iii) was in compliance with its obligations under Section 11 and, except for such act, Section 16. Nothing in this Section 22.3 is intended to limit either party's liability to the other party for any breach of this Agreement.

22.4 Termination for the City Convenience. At any time after the first Reset Date, the City may terminate this Agreement, for convenience and without cause, by providing written notice to Vendor at least three (3) months prior to the termination date designated in such notice and paying to Vendor the liquidated damages specified in Schedule 22.2. The parties agree that such liquidated damages are not a penalty, and intend such liquidated damages to include Vendor's mobilization and demobilization costs (including costs related to termination of third party agreements), recovery of unamortized or unrecovered investment, opportunity and lost opportunity costs, employee-related costs, and a portion of anticipated profits from this Agreement, and that such damages shall constitute Vendor's sole damages for the City's termination for convenience.

22.5 Termination upon Change of Control of Vendor. In the event of a change in Control of Vendor where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions occurring within a consecutive twelve (12) month period, or in the event all or substantially all of the assets of Vendor are acquired by any entity, or in the event Vendor is merged with or into another entity to form a new entity, and, due to such change of Control or the occurrence of such acquisition or merger transaction, as the case may be, the City has a commercially reasonable basis for believing that (i) the creditworthiness of Vendor is thereby materially and adversely affected, (ii) that the Services, or Vendor's ability to perform the Services, is thereby materially and adversely affected, or (iii) control of Vendor is transferred to a third party with a history of poor operations, then, at any time within thirty (30) days after the date on which the City is notified in writing or otherwise obtains actual knowledge of the occurrence of any such event(s) constituting a change of Control, or of the acquisition or merger transaction, as applicable, the City may terminate this Agreement or any of the Service Schedules contemplated by providing written notice to Vendor of such of such termination (specifying in such notice and with reasonable particularity the basis by which the City deems such termination to be warranted -- i.e., the City's "stated concern") at least sixty (60) days prior to the termination date specified in the notice, provided that such termination shall be ineffective and of no force or effect if, within said 60-day period, Vendor, or an entity acting on its behalf, provides to the City commercially reasonable assurances addressing the City's stated concern.

This section shall not prevent Vendor from making any changes in ownership that arise out of death, divorce or in connection with estate planning purposes, nor will this section be deemed to preclude any of the existing shareholders (or other equity interest owners) of Vendor from freely exchanging shares of stock (or other equity interests) in Vendor amongst themselves or their Affiliates (even if a change in Control would otherwise thereby be deemed to have occurred), provided that such changes are not reasonably calculated to cause any successor to Vendor to be materially less creditworthy. Any termination by the City pursuant to this provision shall not be a cause for Vendor to be entitled to liquidated damages pursuant to Schedule 22.2.

22.6 Termination for Insolvency. Either Party may terminate this Agreement by written notice to the other party specifying a date for termination if the other Party becomes Insolvent; provided, however, that Vendor may not terminate this Agreement pursuant to this Section 22.6 if the net Charges are such that City is unlikely to owe Vendor any fund or otherwise pays for the Services in advance on a month-to-month basis.

22.7 Termination for Failure to Satisfy Success Criteria. The City may terminate any Service Schedule if Vendor fails to meet the Success Criteria within the applicable Trial Periods for such Service Schedule, without any opportunity to cure such breach.

22.8 Obligations of the City upon Termination or Expiration. Upon any expiration or termination of this Agreement, the City will pay Vendor for all Services performed prior to the effective date of such termination or expiration, in accordance with Section 6, and, if applicable, pay Vendor all amounts due Vendor under Section 22.9.

22.9 Termination Assistance.

22.9.1 Generally. Commencing upon (i) the effective date set forth in any notice of termination with respect to any particular Service Schedule or this Agreement as a whole, (ii) expiration of this Agreement, and continuing through up to one hundred eighty (180) days after the effective date of such termination or expiration, Vendor will provide to the City, or to the City's designees, at the City's request (including to one or more third parties), any and all applicable Services and reasonable assistance requested by the City to allow the applicable Services to continue without material interruption or adverse effect, and to facilitate the orderly transfer of the Services to the City or the City's designee.

22.9.2 Compensation. For any period during the Term or for up to one hundred eighty (180) days following the termination or expiration of this Agreement for any reason, the City will compensate Vendor for any assistance furnished by Vendor to facilitate the transfer of the applicable Services to the City or the City's designee that is beyond the Services contemplated by this Agreement. Such compensation will be determined consistently with the Charges set forth in this Agreement for the Services; except that (i) if the City terminates for convenience as permitted under Section 22.4 or this Agreement expires, Vendor shall be entitled to increase the processing component of the Charges for the applicable Services by ten percent (10%); and (ii) if Vendor terminates this Agreement for cause or following the City becoming Insolvent, Vendor shall be entitled to increase the processing component of such Charges by twenty percent (20%) and may demand from the City any and all assurances reasonably deemed adequate by Vendor to demonstrate the City's ability and willingness to pay such compensation

(and if such adequate assurance is not received by Vendor, the City may receive termination assistance only if payments for such assistance are received by Vendor monthly in advance). Any such assistance furnished by Vendor after such one hundred eighty (180) day period (other than surviving obligations or incomplete Services) will be furnished only upon Vendor's prior written agreement, and charged to the City at Vendor's then-current commercial time and materials rates for such services.

22.9.3 Vendor Employees. Except for a termination by the City for convenience and without cause, upon expiration or termination by the City of this Agreement or relevant Service Schedule, the City or the City's designees may offer employment to any Vendor employees who regularly spend 65 percent or more of their working hours performing any of the Services for the City as of the expiry date or the date that the City gives notice of termination, as applicable. To the extent any such employee has signed any employment agreement or other arrangement precluding or hindering such employee's ability to be recruited or hired by the City, Vendor agrees that such restriction will be null and void with respect to the employee's dealing with the City and Vendor will not seek to enforce such restriction or to otherwise preclude or hinder such employee from being recruited or hired by the City or the City's designees. Vendor will provide the City and the City's designees' reasonable access to such employees for the purposes of interviews, evaluations, and recruitment. Notwithstanding the foregoing, Vendor may upon notice to the City designate up to five (5) of such employees for secondment to the City for a period of time reasonable in the circumstances (in no case less than three months or more than six months), in lieu of permitting the City to offer employment to such employees. During the period of secondment the City shall reimburse Vendor for the salary and fully-loaded benefits allocated to all seconded employees.

22.9.4 Assets. Except for a termination by the City for convenience and without cause, upon expiration or termination of this Agreement, Vendor will make available to the City or its designees, pursuant to reasonable terms and conditions, any of the City assets used by Vendor in Vendor's performance of the Services (but for the avoidance of doubt, this shall exclude the Designated Processing Facility and the equipment and facilities directly related thereto that were acquired by Vendor from third parties).

22.9.5 Third Party Services. Vendor will make available to the City or the City's designees, pursuant to reasonable terms and conditions, any third party services then being utilized by Vendor in the performance of the Services, provided that necessary consents of such third parties are obtained, such consents to be obtained at the City's expense unless the Agreement is terminated by the City for cause under Section 22.1. Vendor will be entitled to retain the right to utilize any such third party services in connection with the performance of services for any other Vendor customer. Should the City so elect by written notice to Vendor, subject to the consent requirement described in the first sentence of this Section 22.9.5, and subject to the City's consent, Vendor will assign to the City the applicable portions of all contracts with third party providers that cover goods or services used by Vendor solely or in majority part to provide Services to the City. Vendor will use all commercially reasonable efforts to obtain the third party provider's consent to provide its goods or services directly to the City on the same terms and conditions applicable to Vendor's acquisition from such contractor; in each case subject to the City's assumption of Vendor's obligations to the contractor in respect to acquisition of such goods or services, provided, however, that if Vendor uses such

commercially reasonable efforts, Vendor shall not have any liability for its failure to obtain such consents. In the event that Vendor has been unable to obtain the clauses set forth in Schedule 9 (if applicable) in any New Contract, Vendor shall reasonably assist the City in accordance with this Section 22 in making commercially reasonable efforts to secure for the City contracts with terms, conditions, and prices substantially similar to the terms, conditions, and prices under which Vendor has provided Services to the City under such New Contract. All assignments contemplated by this Section shall be subject to the City's consent, any consent required by any applicable third party, and the City's payment of any fees or charges required by such third parties in connection with such assignment unless this Agreement is terminated by the City for cause under Section 22.1. In the event that such consent is not obtained, Vendor shall have the right, in its sole discretion, to terminate the subject agreement following the expiration of the termination assistance period hereunder at any time. Vendor will provide the City an opportunity to negotiate a replacement agreement until the end of the termination assistance period hereunder. During the termination assistance period, so long as the third-party agreement has not been terminated, the City shall continue to pay Vendor the Charges relating to the third-party agreement. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, the City shall be responsible for the satisfaction and performance of all obligations (including all financial obligations) under any third-party agreements that may be assigned and accepted, or conveyed to the City pursuant to this Section with respect to periods after the date of any such assignment or conveyance, and the City shall indemnify and hold Vendor harmless from and against, and reimburse Vendor for, any Losses resulting from any claim that the City did not perform such obligations; and Vendor shall indemnify and hold the City harmless from and against, and reimburse the City for, any Losses arising from any such agreements prior to the assignment and acceptance of the agreement. This Section 22.9.5 is in addition to Vendor's obligations under Section 9.

22.9.6 Working Papers. If the City terminates this Agreement or a Service Schedule for Vendor's default or upon Vendor becoming Insolvent, Vendor shall immediately deliver to the City (A) all the City Property in its possession, custody, or control, and (B) all other work in process and documentation (other than Vendor Intellectual Property) reasonably necessary or appropriate, in the City's reasonable judgment, for the City to acquire the benefit of all Deliverables previously delivered or work in process, or to provide the Services.

22.9.7 Further Assurances. The parties shall take such other actions as reasonably necessary to effect a transfer of the Services from Vendor to the City.

22.10 Termination Not Exclusive Remedy. Any termination right provided to a Party in this Agreement is not intended as such Party's exclusive remedy for the other Party's breach that gave rise to the termination right, but is intended to be in addition to any other rights available to such Party at law, in equity, or under this Agreement.

22.11 Equitable Remedies. Vendor acknowledges that, in the event Vendor breaches, or attempts or threatens to breach, its obligation to provide the City assistance in accordance with this Section 22, then, notwithstanding Section 30, the City may seek an injunction, order of specific performance, or other equitable relief in any court of competent jurisdiction, without bond or other security or undertaking.

23. INDEMNIFICATION.

23.1 Injury and Property Damage. Vendor shall indemnify, defend, and hold the City harmless from and against any and all Losses for bodily injury (including death) or damage to tangible personal or real property, to the extent based upon, or arising out of, the negligence, willful misconduct, or violations of Applicable Law by Vendor but not for any Losses caused in whole or substantial part by the negligence of the City.

23.2 Breach of Contract. Vendor shall indemnify, defend, and hold the City harmless from and against any and all Losses to the extent caused by the Vendor's breach or default of this Agreement or any Service Schedule, unless another provision of this Agreement expressly provides for an exclusive remedy as a result of the Vendor's breach or default. Without limiting the generality of the foregoing, Vendor shall indemnify, defend, and hold the City harmless from and against any and all Losses arising out of or relating to Transferred Employees, to the extent that such claims or demands relate to events occurring on or after the date that Vendor hires such Transferred Employees (including any Losses relating to any failure by Vendor to pay compensation, or provide benefits, to such individual with respect to periods during which such individual was in the employ of Vendor, or any Losses relating to the termination of such individual's employment with Vendor). Vendor shall not be responsible for any Losses relating to Transferred Employees to the extent that such Losses relate to events occurring prior to the date that Vendor hires such Transferred Employees (including any Losses relating to any failure by the City to pay compensation, or provide benefits, to such individual with respect to periods during which such individual was in the employ of the City, or any Losses relating to the termination of such individual's employment with the City).

23.3 Compliance with Health, Safety, and Environmental Regulations. Vendor shall, and shall use commercially reasonable efforts to ensure that its Permitted Subcontractors and their respective employees comply fully with all federal, state, and municipal Applicable Law, health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. Vendor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of Vendor's or any Permitted Subcontractors obligations under this paragraph.

23.4 Other Vendor Indemnification

23.4.1 Definitions.

23.4.1.1 "***Indemnified Claims***" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

23.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, Vendor, their respective agents, officers, employees and Subcontractors; the officers, agents, and employees of such Subcontractors; and third parties); and/or;

23.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, Vendor, Vendor's Subcontractors, and third parties),

23.4.1.2 "***Fault***" shall include the provision of defective or non-conforming Services or deliverables, ordinary or gross negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

23.4.2 VENDOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF VENDOR, OR VENDOR'S AGENTS, EMPLOYEES, TEMPORARY WORKERS OR SUBCONTRACTORS, IN THE PERFORMANCE OF VENDOR'S OBLIGATIONS UNDER THE CONTRACT WHICH ARE NOT CAUSED IN MATERIAL PART BY THE FAULT OF THE CITY. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR VENDOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

23.5 Infringement.

23.5.1 Indemnification for Infringement. Vendor shall indemnify, defend, and hold the City harmless from and against any and all Losses related to any claims or demands by any third party for actual or alleged infringement of any Intellectual Property Right of any third party, to the extent based upon any item provided by Vendor (including software) as part of the Services under any Service Schedule. In the event of such a claim of infringement, Vendor may, in its reasonable discretion, either procure a license to enable the City to continue to use the alleged infringing item or develop or obtain a non-infringing substitute that is not reasonably expected to increase the cost or difficulty for the City to use the Services. Notwithstanding the foregoing, Vendor shall not be liable to the City for any and all Losses related to any claims or demands by any third party for actual or alleged infringement of any Intellectual Property Right of any third party, to the extent based upon Vendor's use of any item provided or made available by the City (including software). In the event of such a claim of infringement, the City may, in its discretion, either procure a license to enable Vendor to continue to use the alleged infringing item or develop or obtain a non-infringing substitute that is not reasonably expected to increase the cost or difficulty for Vendor to perform the Services.

23.5.2 Limitation on Indemnity. Vendor's indemnification obligation under this Section 23.5 does not extend to the extent a claim is based upon any of the following (an "***Exclusion***"): (A) a modification of software, hardware, or equipment by the City, other than

modifications made at the request of Vendor; (B) the use by the City of any software products other than in accordance with relevant software licenses, provided that written copies of such licenses were provided to the City by Vendor reasonably prior to when such claim arose; or (C) Vendor's use, in accordance with the applicable license agreement, of software products licensed or sublicensed or made available to it by the City.

23.6 Indemnitees. Vendor's indemnification obligations under this Agreement extend to the City and the City's Affiliates, and their respective officers, directors, employees, agents, successors, and assigns (collectively, such party's "***Indemnitees***").

23.7 Indemnification Procedures. If any Indemnitee incurs any Loss or receives any notice of a third party claim or other allegation with respect to which Vendor (the "***Indemnifying Party***") may have an obligation of indemnity hereunder, then the Indemnitee will, as soon as reasonably possible following receipt of such notice (but in no event more than thirty (30) days after such notice is received), give the Indemnifying Party written notice of such third party claim or allegation setting forth in reasonable detail the facts and circumstances surrounding the third party claim. The Indemnifying Party shall be permitted to assume and control the defense and settlement of the third party claim, including the selection and employment of counsel; provided, however, that the Indemnitee may participate in such defense and settlement at its own expense and through its own counsel; the Indemnitee will not make any admission of liability or take any other action that limits the Indemnifying Party's ability to defend the third party claim; and the Indemnitee will cooperate fully, at the Indemnifying Party's expense, in the defense or settlement of the third party claim. The Indemnifying Party shall have no liability for any payments made, or costs or expenses incurred, by the Indemnitee that are not authorized by the Indemnifying Party or necessary to comply with this procedure.

24. LIMITATIONS OF LIABILITY.

24.1 Exclusion of Consequential Damages. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 24, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, OR SIMILAR DAMAGES (INCLUDING LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY, BUSINESS ADVANTAGE, EXPECTED SAVINGS, OR DATA) IN CONNECTION WITH CLAIMS AND ACTIONS ARISING UNDER OR RELATING TO THIS AGREEMENT, INCLUDING CLAIMS BASED UPON A BREACH OF THIS AGREEMENT OR UPON SUCH PARTY'S PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, NOTWITHSTANDING EITHER THE FORM IN WHICH ANY CLAIM OR ACTION IS BROUGHT OR ANY FAILURE OF ESSENTIAL PURPOSE, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

24.2 Cover; Liquidated Damages. Cost of cover shall be deemed direct damages and not subject to Section 24.1. Liquidated damages payable under Section 22.2.3 shall be deemed direct damages and not a consequential or similar damage excluded pursuant to Section 24.1.

24.3 Exceptions. THE LIMITATIONS SET FORTH IN SECTION 24.1 SHALL NOT APPLY TO CLAIMS (I) WITH RESPECT TO A BREACH OF ANY CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 16; (II) WITH RESPECT TO ANY FAILURE BY EITHER PARTY TO FULFILL ITS PAYMENT OBLIGATIONS TO THE OTHER OR TO A SERVICE PROVIDER HEREUNDER ; (III) WITH RESPECT TO FAILURE BY VENDOR TO FULFILL ITS OBLIGATION TO PROVIDE SERVICE LEVEL CREDITS TO THE CITY; (IV) BASED UPON WILLFUL MISCONDUCT OF A PARTY; (V) BASED UPON A PARTY'S INTENTIONAL BREACH OF THIS AGREEMENT; OR (VI) BASED UPON EITHER PARTY'S OBLIGATIONS RESPECTING DATA PROTECTION AND PERSONALLY IDENTIFIABLE DATA.

25. REPRESENTATIONS AND WARRANTIES OF THE PARTIES; DISCLAIMER.

25.1 Organization. Each party represents to the other that it is duly organized, validly existing and possessing all requisite power and authority to execute and deliver this Agreement and to grant the rights granted by it, and perform the obligations undertaken by it, in this Agreement. Vendor represents that it is a corporation organized in the State of Texas and is in good standing under the law of such State, and each State in which it is conducting business.

25.2 Authority; Binding Agreement. Each party represents to the other that this Agreement has been duly executed and delivered by an appropriately authorized representative of such party and that this Agreement is a valid and binding obligation of such party, enforceable against such party in accordance with the terms and conditions set forth herein.

25.3 Disclaimers. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, INCLUDING ITS EXHIBITS, SCHEDULES OR OTHER ATTACHMENTS, ALL REPRESENTATIONS, CONDITIONS, ENDORSEMENTS OR OTHER WARRANTIES (WHETHER IMPLIED BY STATUTE, COMMON LAW, OR OTHERWISE) ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW, INCLUDING ANY UNINTERRUPTED OR ERROR-FREE OPERATIONS, IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES OF TITLE OR NON-INFRINGEMENT.

26. EXCUSABLE DELAY.

26.1 Force Majeure. If either Party is rendered unable by any event beyond its reasonable control and that by the exercise of due diligence it is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore (***"Force Majeure"***) to carry out, in whole or part, such Party's obligations under this Agreement and such party gives written notice and full details of the Force Majeure to the other Party as soon as practicable after the occurrence of the Force Majeure, then during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the Force Majeure (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure) will be suspended to the extent required by the Force Majeure and such Party will not be liable for any damages incurred by the other Party as a result thereof. The Party

affected by the Force Majeure will remedy the Force Majeure to the extent possible with all due diligence. During any period that Vendor is unable to provide the Services by reason of Force Majeure and as a result the City's activities are severely and adversely affected (as determined by the City in its reasonable judgment), or the City reasonably believes that such a failure is likely to occur, the City may obtain substitute services from a replacement vendor on a temporary basis until the Force Majeure is cured, including the right to cause a greater volume of the Services in question to be performed by the Designated Competitor. If such replacement services cannot be obtained on commercially reasonable terms on a temporary basis, the City may terminate such Services in its sole discretion. A termination for Force Majeure shall not require the City to pay liquidated damages.

26.2 Predicate Obligations. The parties acknowledge that certain of each Party's obligations depend upon the timely and compliant performance by the other Party of its obligations hereunder ("***Predicate Obligations***"). Each Party's performance of an obligation hereunder shall be excused to the extent its failure to perform that obligation results from the other Party's or its respective representatives' or agents' failure to perform its Predicate Obligations as required hereunder.

27. DATA RETENTION AND RIGHTS IN DATA.

27.1 Document Retention. During the Term Vendor will retain all the City Data for as long as the City is required by Applicable Law or its policies and practices to retain such data associated this Agreement. The City shall inform Vendor of any new requirements of Applicable Law and changes in the City policies, all of which shall be incorporated into this Agreement. Nothing in this Section 27 shall relieve Vendor of (i) other document retention requirements expressly provided in this Agreement, or (ii) its obligation to modify the Services to conform to any requirement of Applicable Law.

27.2 Rights in Data. The City Data will be and remain the property of the City. After the Term, or upon request by the City at any time with respect to particular data not required by Vendor to perform Vendor's obligations under this Agreement, Vendor will return to the City the City Data (complete and unaltered) in a form and format reasonably acceptable to the City and maintained by Vendor, or Vendor will destroy the City Data if the City so elects by written notice to Vendor. Vendor will use the City Data solely to perform Vendor's obligations under this Agreement. Vendor will not sell, assign, lease, disseminate, or otherwise dispose of the City Data or any part thereof to any other person, nor will Vendor commercially exploit any part of the City Data. Vendor will not possess or assert any property interest in or any lien or other right against or to any the City Data.

27.3 Access to the City Data. Notwithstanding any other provision of this Agreement, Vendor will make all the City Data (complete and unaltered) available to the City at all times in accordance with the City guidelines for data retention in effect from time to time (the "***Data Guidelines***"), at no additional charge. During the Term the City shall furnish Vendor any new or modified Data Guidelines, and Vendor shall immediately implement procedures to conform its data storage thereto. Vendor will not destroy any the City Data (other than as otherwise permitted under this Agreement), without the prior express written consent of the City.

If the City record retention policy and this Section 27 conflict, this Section 27 will control. This Section 27 will survive the termination or expiration of this Agreement for any reason.

28. INSURANCE.

28.1 Insurance Requirements. At all times during the Term, Vendor shall procure and maintain in force the insurance coverage as described in and at the policy limit amounts as set forth on Schedule 28. Any additional insurance required by a Service Schedule shall be set forth therein. In addition, on the third (3rd) anniversary of the first Cutover Date under any Services Schedule, and every three (3) years thereafter, the City has the right to reasonably reset the policy limits that Vendor is to maintain under any of the policies of insurance required in Schedule 28. In the event of any dispute as to the reasonableness of the policy limits required by the City as of such date, Vendor may either initiate a Benchmarking Process with respect to such policy limits within thirty (30) days of the date the City provides notice of the new policy limits, or Vendor shall promptly procure insurance with such revised policy limits.

28.2 Insurance Does Not Limit Liability. The provisions of this Section 28 are not intended to limit Vendor's obligations hereunder to insurance proceeds or coverage limits.

28.3 Release and Waiver of Subrogation. The parties hereto release each other, and their respective agents and employees, from any liability for injury to any person or damage to property that is caused by or results from any risk insured against under any insurance policy required to be carried by either of the parties hereunder that contains a waiver of subrogation by the insurer and is in force at the time of such injury or damage; subject to the following limitations: (i) the foregoing provision will not apply to the commercial general liability insurance; and (ii) neither party will be released from any such liability to the extent any damages resulting from such injury or damage are not covered in full by the recovery obtained by the other from such insurance, but only if the insurance in question permits such partial release in connection with obtaining a waiver of subrogation from the insurer. This release will be in effect only so long as the applicable insurance policy contains a clause to the effect that this release will not affect the right of the insured to recover under such policy. Each party will use reasonable efforts to request that the insurer waives all right of recovery by way of subrogation against the other party and its agents and employees in connection with any injury or damage covered by such policy. However, if any insurance policy cannot be obtained with such a waiver of subrogation, or if such waiver of subrogation is only available at additional cost and the party for whose benefit the waiver is to be obtained does not pay such additional cost, then the party obtaining such insurance will notify the other party of that fact and thereupon will be relieved of the obligation to obtain such waiver of subrogation rights from the insurer with respect to the particular insurance involved.

29. DISASTER RECOVERY.

Upon the Processing Services Transition Commencement Date, Vendor will develop, as part of the Transition Plan for each Service Schedule, a written plan addressing business continuity and disaster recovery activities. This plan (when approved by the City, the "***Disaster Recovery Plan***") will include the business continuity and disaster recovery activities that Vendor will implement upon the Processing Services Trial Commencement Date. The Disaster

Recovery Plan will address Vendor's ability to provide each of the Services in the event of a disaster. Nothing in the Disaster Recovery Plan will limit Vendor's responsibilities hereunder in the event of a disaster or other event. Vendor will review the adequacy of the Disaster Recovery Plan no less frequently than annually, and will revise or augment the Disaster Recovery Plan as necessary to ensure its currency. Vendor shall deliver a copy of such Disaster Recovery Plan and each revision thereto to the City, redacting only those portions of the plan that contain business proprietary and confidential information. Notwithstanding such redaction, the City's Liaison Officer or designee may inspect the unredacted plan of at the offices of Vendor located in the Austin, Texas area upon reasonable notice.

30. DISPUTE RESOLUTION.

30.1 General. If any dispute arises between the Parties with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either of the Parties hereunder, such dispute shall be addressed in accordance with this Section 30. Each Party shall continue to perform its obligations under this Agreement in good faith while the Parties are attempting to resolve a dispute.

30.2 Designated Representatives. In connection with any dispute, at the written request of either party (a "***Dispute Notice***"), the Liaison Officer and Service Delivery Manager shall meet as often as they deem appropriate to exchange and discuss all information that is appropriate and germane with regard to the dispute in issue and shall negotiate in good faith to attempt to resolve the dispute without the need for any formal proceeding. During such negotiations, all reasonable requests made by a Party's designated representative for non-privileged information of the other Party that is reasonably related to performance under this Agreement shall be honored, so that each Party may be fully informed of the other Party's position. The specific format of such meetings and negotiations shall be left to the discretion of the designated representatives, but may include the preparation of mutually agreed upon statements of fact or written statements of a Party's position that are then furnished to the other Party.

30.3 Dispute Escalation. If the designated representatives of the parties fail to resolve a dispute in accordance with the process set forth in Sections 30.1 and 30.2, within fifteen (15) days after the delivery of the applicable Dispute Notice regarding such dispute (or such other period of time as the parties mutually agree in writing), the dispute shall be deemed escalated to the Assistant City Manager or Department head who is directly responsible for the Services and Vendor's Senior Officer for their review and good faith attempts at resolution. If such executives fail to resolve such dispute within fifteen (15) days after the delivery of the applicable Dispute Notice (or such other period of time as the Parties mutually agree in writing), the dispute shall then be deemed escalated to the Vendor's CEO, or designees and the City Manager or designee, for their review and good faith attempts at resolution. If the Parties fail to resolve a dispute within forty-five (45) days after the delivery of the applicable Dispute Notice (or such other period of time as the Parties mutually agree in writing), then, each Party shall have the right to pursue its legal and equitable rights and remedies under and in connection with this Agreement. Except as expressly set forth in Section 30.4, below, the Parties hereby irrevocably agree that the good faith use of the pre-suit procedures set forth in this Section 30.3 is a requisite to a Party bringing a lawsuit arising under or related to this Agreement or the Services and Charges

governed hereby, and in the event either Party should initiate such a lawsuit prior to pursuing in good faith such mandatory pre-suit procedures, then the Parties hereby irrevocably agree that (i) any such suit shall be abated upon the application of a Party, whether or not such Party has otherwise appeared in the lawsuit, until the good faith exercise of the pre-suit procedures are accomplished, and (ii) the suit shall be restyled by the court so that the Party seeking damages or performance from the other Party is listed as Plaintiff, unless both Parties are in good faith seeking substantial damages or equitable relief.

30.4 Exceptions. Neither party shall be obligated to comply with the procedures set forth in Sections 30.1 through 30.3 with respect to (i) any third party claims; (ii) any disputed matters for which less than thirty (30) days remain before the period provided by the applicable statute of limitations governing the claim or cause of action underlying the disputed matter shall expire, unless the party alleged to have breached agrees in writing to extend the expiry date to a date thirty (30) days after the procedures set forth in are Sections 30.1 through 30.3 concluded; or (iii) any breach or threatened breaches hereof as to which the non-breaching party reasonably believes that it will suffer substantial and irreparable injury absent equitable relief. Nothing in this Section 30 shall be deemed to limit or delay either party's rights to seek injunctive or other equitable relief. Nothing herein shall be construed as the City waiving its rights to sovereign immunity set forth in the Texas Constitution.

31. GENERAL PROVISIONS.

31.1 Notices. All notices or other communications to a party that this Agreement requires or permits shall be in writing and addressed to the recipient at its address set forth in Schedule 31.1 (or at such other address as may be designated by such party, in accordance herewith), and shall be transmitted by personal delivery, nationally recognized overnight express carrier, or by U.S. registered or certified mail, return receipt requested, postage prepaid. All notices shall be deemed given when received.

31.2 Waiver Not Presumed. No waiver of any provision of this Agreement or of any rights or obligations of either party hereunder will be effective unless in writing and executed by the party waiving compliance, and any such waiver will be effective only in the specific instance and for the specific purpose stated in such writing. No waiver of any breach of, or default under, any provision of this Agreement shall be deemed a waiver of any other provision, subsequent breach, or default of this Agreement.

31.3 Severability. If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement and replaced by the valid, enforceable provision that most closely approximates the intent of the parties, as expressed herein and all valid and enforceable provisions of this Agreement, so modified, shall continue in full force and effect according to their terms. In litigation between the parties the court shall have the power to reform any severed provision in accordance with this Section 31(c).

31.4 Marketing and Publicity.

31.4.1 Authorized Marketing and Publicity. Notwithstanding the confidentiality provisions of Section 16 or any other provision of this Agreement to the contrary, the City agrees that Vendor may refer to this Agreement (including by name, nature, scope, and term), and may refer to the City by its Marks, subject to the City's prior consent, which consent will not be unreasonably withheld or delayed, for purposes of referencing this Agreement in Vendor's sales and marketing efforts, including making such references on Vendor's websites, in sales presentations, in press releases, in Vendor fact sheets, in any other marketing, promotional, and sales materials, and to third parties, such as analysts and the press, for such purposes. Notwithstanding the foregoing, Vendor may not represent that the City in any way endorses Vendor or approves of Vendor's performance under this Agreement, without the City's prior consent. The City or Vendor may provide copies of this Agreement or release the terms of this Agreement to third parties anytime after it becomes a final draft acceptable to both Parties.

31.4.2 Right to Use. Subject to Section 31.4.1, the City hereby grants to Vendor a worldwide, royalty-free and nontransferable license to refer to and use the Marks of the City on Vendor's websites, in sales presentations, in press releases, in Vendor fact sheets, in any other marketing, promotional, and sales materials, and to third parties, such as analysts and the press, solely for the purposes set forth in Section 31.4.1 or for such other purposes as the City shall approve in writing. Such use includes use in print, video, electronic media and transmission, such as on the Internet, provided that in no way shall such license to use be construed as a transfer of any other rights, or any ownership interests, in such Marks to Vendor, and provided further that Vendor uses such Marks in accordance with the guidelines set forth in Schedule 31.4. The licenses granted herein shall continue until this Agreement is terminated pursuant to Section 22 or if, in the City's reasonable determination, Vendor misused the City's Marks or used the City's Marks illegally. Upon the termination of this Agreement, Vendor agrees to (i) promptly discontinue all use of the City's Marks (ii) promptly take all steps to refrain from referencing or using the City's Marks on Vendor's websites, in sales presentations, in press releases, in Vendor fact sheets, in any other marketing, promotional, and sales materials, and to third parties, such as analysts and the press.

31.4.3 Limitation. Except as otherwise set forth above, neither Party may use the other's Marks except to the extent required by Applicable Law, without the other Party's prior written consent in each instance.

31.5 Governing Law; Exclusive Venue. This Agreement shall be governed by, subject to, and interpreted in accordance with, the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The exclusive venue for all actions or proceedings arising out of, or related to, this Agreement shall be in an appropriate federal or state court located in Austin, Travis County, Texas, and each Party hereby irrevocably consents to the personal and subject matter jurisdiction of such courts and waives any claim that such courts do not constitute a convenient and appropriate venue for such actions or proceedings.

31.6 Survival. Any provisions of this Agreement that impose continuing obligations upon a Party or, by their nature or terms, would be reasonably understood to have been intended to survive and continue in force and effect after expiration or termination of this Agreement, shall remain in force and effect after such expiration or termination for so long as intended,

including the provisions of Sections 3, 6.5, 6.10, 7.4, 7.5, 8.2, 11, 13, 15, 16, Section 22.3 through 22.7, 24, 25.3, 27, 30 and 31.

31.7 Neither Party Considered Drafter. Despite the possibility that one Party may have prepared the initial draft of this Agreement or played the greater role in the preparation of subsequent drafts, the Parties agree that they have negotiated at arm's length and have had the opportunity to engage legal counsel of their choice. Therefore, neither Party shall be deemed the drafter of this Agreement and this Agreement shall be construed as though jointly prepared by the Parties, without favor to either Party.

31.8 Agreement Expenses. Except as otherwise expressly provided herein, each Party shall bear its own costs and expenses of negotiating this Agreement and the Service Schedules.

31.9 Cumulative Remedies. Unless expressly provided to the contrary, no remedy set forth in this Agreement or any Service Schedule is intended to be, nor shall be, exclusive of, or mutually exclusive with regard to, any other remedy and each such remedy shall be in addition to every other remedy given hereunder, or now or hereafter existing or available at law, in equity, by statute, or otherwise, individually or in any combination thereof.

31.10 No Third Party Beneficiaries. This Agreement is an agreement by and between the Parties and neither confers any rights upon any person or entity not a Party hereto nor precludes any actions or claims against, or rights of recovery from, any person or entity not a Party hereto.

31.11 Time is of the Essence. The parties expressly acknowledge and agree that time is of the essence with respect to the provision of Services and all other obligations of the Parties under this Agreement.

31.12 Further Assurances. Each of the Parties shall from time to time, at the request of the other Party and without further consideration, execute and deliver such other documents and take such other actions as the other Party may reasonably request to consummate more effectively the transactions contemplated by this Agreement.

31.13 Counterparts; Facsimile. This Agreement may be executed in duplicate counterparts. Each such counterpart so executed, when delivered, shall be deemed an original document, and both such counterparts together shall constitute one and the same instrument. This Agreement shall not be deemed executed unless and until at least one such counterpart bears the signature of each Party's designated signatory. The signature of a Party transmitted by facsimile shall be deemed to be its original signature for all purposes.

31.14 Amendment and Consents to be in Writing.

31.14.1 Amendments. This Agreement may not be amended orally. The terms of this Agreement (including any Service Schedule) may only be amended by a written document executed by both the City and Vendor.

31.14.2 Consents. Any consent of a Party required by this Agreement shall be in writing and signed by the Party whose consent is required.

31.15 Entire Agreement. THIS AGREEMENT CONSTITUTES THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN VENDOR AND THE CITY AND SUPERSEDES ALL PRIOR AGREEMENTS, NEGOTIATIONS, REPRESENTATIONS, AND COMMUNICATIONS, WRITTEN AND ORAL, WITH REGARD TO THE SUBJECT MATTER HEREOF.

Balcones Resources, Inc	**City of Austin**
By:	By:
Name: Kerry R. Getter	Name: Marc A. Ott
Title: CEO	Title: City Manager

SCHEDULE 3.1
DEFINITIONS

For purposes of this Agreement, the following capitalized terms will have the following meaning.

"***Acceptance Date***" means as set forth in Section 10.4.

"***Accepted***" means as set forth in Section 10.4.

"***Accounting Statement***" means as set forth in Section 6.3.

An "***Affiliate***" of a party (in adjective form, "***Affiliated***") means any person or entity, directly or through one or more intermediaries, that controls, is controlled by, or is under common control with such party. Control may be exercised by equity ownership, control of a board of directors or other governing body of an entity, voting agreement, or otherwise.

"***Agreement***" means as set forth in the Preamble.

"***Applicable Law***" means, as of the date in question any then-existing federal or state constitutional provision, law, statute, rule, or regulation, any permits, approvals, orders, registrations or licenses of any state, federal or local governmental authority issued in connection with the activities contemplated by this Agreement and any Service Schedule, and all municipal ordinances and duly adopted municipal regulations which are applicable by law from a governmental authority of competent jurisdiction.

"***Aseptic Containers***" refers to the multi-layer plastic, paper and metal packaging that usually contains juice, soy milk and other liquids. Examples of aseptic containers include milk paperboard containers, gable-top drink containers, juice pouches, liquid food service containers, and foil based pouches.

"***Assigned Contracts***" shall have the meaning given to such term in Schedule 9.

"***Benchmarker***" means the third party designated by the City that is reasonably acceptable to Vendor upon sixty (60) days' notice to Vendor to conduct the Benchmarking Process. The failure of Vendor to object to the proposed Benchmarker within thirty (30) days of the City's notice shall be irrevocably deemed to be acceptance of the Benchmarker designated by the City.

"***Benchmarking Process***" means the objective measurement and comparison process (utilizing baselines and industry standards agreed upon by the City and Vendor) established by the City and Vendor.

"***Benchmark Results***" means the final results of the Benchmarking Process delivered by the Benchmarker in a written report to each of the City and Vendor, including any supporting documentation requested by the City or Vendor to analyze the results of the Benchmarking Process.

"***Benchmark Review Period***" means the ninety (90) period following receipt by the City and Vendor of the Benchmark Results.

SCHEDULE 3.1
DEFINITIONS

"***City***" means as set forth in the Preamble.

"***City Data***" means as set forth in Section 15.6.

"***City Intellectual Property***" means as set forth in Section 15.2.

"***City Property***" means any tangible or intangible property owned or leased, or which the City has the right to use (other than any tangible or intangible property owned, leased, or licensed by Vendor).

"***City Responsibilities***" means as set forth in Section 4.2.

"***Colored High Density Polyethylene***" or "***CHDPE***" shall mean opaque plastic containers labeled with the #2 code of the SPI resin identification coding scheme. If the United States shall adopt a different coding scheme for recyclable plastic material, CHDPE shall mean items coded with the most analogous code or codes to the current #2 code.

"***Change***" means as set forth in Section 20.1.1. For the avoidance of doubt, the term Change does not include or refer to minor adjustments to working hours, number of residents served, or incremental growth or decline in volumes, or to any Service Requests or Projects (as defined in Annex A to Schedule 6.1).

"***Change Approval***" means an agreed Change to this Agreement that is documented in accordance with Section 20 and Schedule 20.3.

"***Change Request***" means written a request made by either party for a Change, setting forth in reasonable detail the Change proposed, the purpose for such Change, and its impact on the then-existing Services.

"***Collection Services***" means as set forth in Section 1.12.

"***Commercial Services***" means as set forth in Section 1.12.

"***Confidential Information***" means as set forth in Section 16.1.

"***Contract Year***" means each one-year period commencing on the Acceptance Date and each anniversary thereof.

"***Control***" and its derivatives will mean, with regard to any entity, the legal, beneficial, or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights; or control of such entity by means of voting agreement or otherwise.

"***Critical Failure***" means a failure resulting predominantly from an act or omission of Vendor in performing an obligation under this Agreement or a Service Schedule that causes a critical and measurable economic impact on a material portion of the City business or operations.

SCHEDULE 3.1
DEFINITIONS

"***Customer***" means those Persons with whom the City from time to time has a contract to collect or process Material.

"***Cutover Date***" means as defined in Section 10.1.

"***Data Guidelines***" means as set forth in Section 27.3.

"***Deliverable***" means any tangible work product created specifically for the City under a Service Schedule.

"***Designated Competitor***" shall mean one or more third party entities that, with respect to a specific Service Schedule, also will have executed an agreement substantially in the same format, and subject to substantially similar terms and conditions as this Agreement, and which will provide Services to the City under a Service Schedule that are substantially similar to those provided by Vendor under a Service Schedule, but such Services may be provided by a Designated Competitor on price, revenue and other financial terms that may or may not be similar to those agreed to by the City and Vendor for such services.

"***Designated Processing Facility***" shall mean that single piece of contiguous real property, the improvements thereon, and the equipment therein, all of which is owned by Vendor or leased to Vendor by third parties at which the processing of SFR Recyclable Materials occurs as a result of the Processing Service Schedule. The Designated Processing Facility shall not include any equipment of the City that may be used or stored on such parcel of real estate, or which is expressly stated to be owned or reclaimed by the City as a result of any termination of a Service Schedule or this Agreement. Vendor shall have only a single Designated Processing Facility for the purposes of Section 22.9.4, not withstanding that the Vendor may actually perform the Services from more than a single location. Vendor shall provide a written declaration of its Designated Processing Facility to the City within forty-five (45) days of the Execution Date, and may change such declaration from time to time upon sixty (60) days advance written notice to the City.

"***Direct Employee***" means with respect to Vendor any natural person that is a Temporary Worker, Probationary Worker or who receives regular instruction, supervision and control from Vendor, and for whom Vendor is responsible for paying (or reimbursing for) their salary and any direct or indirect benefits, even if such person is an employee of a staff leasing company or similar arrangement, but whose primary work is dedicated to Vendor.

"***Disaster Recovery Plan***" means as set forth in Section 29.

"***Disposal***" means any of the following: (i) placing in a landfill, (ii) converting to a refuse-derived fuel, (iii) use as a landfill liner fill, (iv) use as a landfill alternative daily cover, (v) biofuels conversion, or (vi) similar means that do not involve the incorporation of the material in question into useful products and does not involve thermal destruction.

"***Dispute Notice***" means as set forth in Section 30.2.

SCHEDULE 3.1
DEFINITIONS

"***End-User***" means either (i) the Residents of the City, or (ii) for Services other than SFR Processing or SFR Collection Services, the one or more principal Persons that are affected by the Services in question, which may include a City departments, an LGC, a Customer, or a commercial facility located in the City or its ETJ that is a beneficiary of the Services in question.

"***Equitable Adjustment***" means as set forth in Section 20.5.

"***ETJ***" means the area lying outside the incorporation limits of the City, but within the area then currently designated as being within the City's extra-territorial jurisdiction established pursuant to the provisions Texas Local Government Code Section 42.001, et. seq.

"***Exclusion***" means as set forth in Section 23.5.2.

"***Execution Date***" means as set forth in the Preamble.

"***Fines***" means items of Collected Material that as of the date in question, and using best available technology that is commercially feasible, such items of Collected Material are not reasonably capable of being usefully recycled due to their small size or the failure of the best available commercially feasible technology to meaningfully sort such items of Collected Material apart from Trash or Residual.

"***Force Majeure***" means as set forth in Section 26.

"***GHG Reduction***" means the use of any Collected Material as a fuel or otherwise for the production of energy in a manner that would otherwise constitute a Disposal, but which results in substantially lower greenhouse gas emissions than the traditional fuel or production of energy that would likely otherwise be used in such process as measured by comparing the number of tons emitted of CO_2 equivalent per unit of work or output from the process in question using such Collected Material compared to the number of tons emitted of CO_2 equivalent by such traditional fuel or production of energy used to produce the same quantity of work or output.

"***Glass***" means glass jars, bottles, and containers.

"***Hazardous Materials***" means any materials the use, manufacture, or storage of which are regulated by a Applicable Law primarily directed at environmental protection.

"***High Density Polyethylene***" or "***HDPE***" shall mean clear plastic containers, bottles, grocery bags, milk jugs, recycling bins, agricultural pipe, base cups, car stops, playground equipment, and plastic lumber labeled with the #2 code of the SPI resin identification coding scheme. If the United States shall adopt a different coding scheme for recyclable plastic material, HDPE shall mean items coded with the most analogous code or codes to the current #1 code.

"***Indemnifying Party***" means as set forth in Section 23.7.

"***Indemnitees***" means as set forth in Section 23.6.

"***Innovation Change***" means as set forth in Section 20.1.2.

"***Insolvent***" means that a Party or other Person (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"***Intellectual Property***" means any tangible or intangible property that may be protected by an Intellectual Property Right.

"***Intellectual Property Rights***" means any and all worldwide intangible rights existing from time to time under the Applicable Law of any jurisdiction, including patent law, copyright law, trade secret law, unfair competition law, trademark law, or other similar laws or principles.

"***Interest Rate***" means as set forth in Section 6.4.

"***Joint Development***" means as set forth in Section 15.3.

"***Letters of Agency***" shall have the meaning given to such term in Schedule 9.

"***Levy***" means as set forth in Section 20.8.3.

"***LGC***" shall have the meaning assigned such term in Section 17.1.2.

"***Liaison Officer***" means as set forth in Section 19.3.

"***Losses***" means (i) final judgments and awards actually paid, or due and payable, to non-Affiliated third parties by the applicable Indemnitees; (ii) costs of defense, reasonable attorneys' fees and court costs reasonably incurred by the applicable Indemnitees in

connection with such judgments and awards; and (iii) out-of-pocket expenses reasonably incurred by the applicable Indemnitees in connection with the investigation, defense, or litigation of the applicable claims or demands relating to such final judgments and awards.

"***Low Density Polyethylene***" or "***LDPE***" shall mean squeezable bottles, such as honey and mustard, with the #4 code of the SPI resin identification coding scheme. If the United States shall adopt a different coding scheme for recyclable plastic material, LDPE shall mean items coded with the most analogous code or codes to the current #4 code.

"***Managed Contracts***" shall have the meaning given to such term in Schedule 9.

"***Management Report***" means as set forth in Section 19.5.

"***Marks***" means a Party's name and any and all trademarks, service marks, trade names, trade dress, service names, domain names, logos, icons, and graphic images used by that party to identify its business, products, or services.

"***Material Subcontract***" means as set forth in Section 17.2.

"***Mixed Paper***" shall mean recovered paper that is not sorted in specific categories including junk mail, magazines, Old Corrugated Containers (OCC), folding boxes (cereal box), telephone books, wrapping paper and other paperboard products (U.S. EPA, 1993a).

"***New Contract***" shall have the meaning given to such term in Schedule 9.

"***Non-Standard Charges***" means as set forth in Section 6.2.

"***Old Corrugated Containers***" or "***OCC***" means corrugated containers having liners of either test liner, jute, or kraft. (Paper Stock Industries Chapter Standards and Practices Circular).

"***Old Newspaper***" or "***ONP***" means newspaper, containing not more than the normal percentage of rotogravure and colored sections. (Reference: Paper Stock Industries Chapter Standards and Practices Circular).

"***Other Plastics***" with the #7 code of the SPI resin identification coding scheme means a wide variety of plastic resins that don't fit into plastic numbers 1 through 6 of the SPI resin identification coding scheme.

"***Party***" means either Vendor, the City, or their respective successors and assigns, and "***Parties***" means all of them.

"***Permitted Subcontractor***" shall have the meaning assigned to such term in Section 17.2, and shall include any person or organization that will provide on behalf of the Vendor any portion of the Services, excluding from this definition only (a) regular or seasonal Direct Employees of the Vendor, (b) direct employees of a Permitted Subcontractor, and

(c) Temporary Workers (as such term is defined herein). All potential subcontractors, prior to beginning any work on, or in preparation with respect to, any aspect of the Services, must first be identified to the City, and shall provide all of the certifications and documents required herein for any such Permitted Subcontractor, and may not commence work on any aspect of the Services until such notification and submission have occurred.

"***Planning Period***" shall have the meaning set forth in Section 19.8.2.

"***Plastics***" means CHDPE, HDPE, LDPE, PETE, PP, PS, PVC, or any other plastic resin (whether currently a part of the SPI resin identification coding scheme or some future coding scheme) for which a viable and commercially feasible market exists for recycled products composed of such resin.

"***Polyethylene Terephthalate***" or "***PETE***" is clear plastic containers which as of the Execution Date are labeled with the #1 code of the SPI resin identification coding scheme. PETE container use includes soft drinks, water, sports drinks, mouthwash and salad dressing. (U.S. EPA 1995c). If the United States shall adopt a different coding scheme for recyclable plastic material, PETE shall mean items coded with the most analogous code or codes to the current #1 code.

"***Polypropylene***" or "***PP***" shall mean packaging, film and containers with the #5 code of the SPI resin identification coding scheme. PP containers include catsup, yogurt, magazine, and medicine containers. If the United States shall adopt a different coding scheme for recyclable plastic material, PP shall mean items coded with the most analogous code or codes to the current #5 code.

"***Polystyrene***" or "***PS***" shall mean clear, hard and brittle plastics with the #6 code of the SPI resin identification coding scheme and is usually used for plastic cutlery and food containers. If the United States shall adopt a different coding scheme for recyclable plastic material, PS shall mean items coded with the most analogous code or codes to the current #6 code.

"***Polyvinyl Chlorine***" or "***PVC***" shall mean vinyl products with the #3 code of the SPI resin identification coding scheme and its application can be for pipe fittings, floor tiles, food and non-food packaging. If the United States shall adopt a different coding scheme for recyclable plastic material, PVC shall mean items coded with the most analogous code or codes to the current #3 code.

"***Predicate Obligations***" means as set forth in Section 26.2.

"***Premises***" means an the City facility or portion of an the City facility from which Vendor provides any portion of the Services.

"***Probationary Worker***" shall mean a person employed by either Vendor or a Subcontractor not previously employed by a Vendor or Subcontractor during the 12 months prior to the current hire date, and that has been employed since their most recent

hire date for less than the shorter of (a) 90 days or (b) the Vendor's or Subcontractor's stated probationary period.

"***Processing Services***" means as set forth in Section 1.1

"***Prohibited Provider***" shall have the meaning given to such term in Schedule 9.

"***Recyclable Material***" shall mean Glass, Plastics, Mixed Paper, ONP, Steel, UBC and such other material as the City may, from time to time, designate as being Recyclable Material in accordance with the terms and conditions of this Agreement.

"***Required Consents***" shall have the meaning given to such term in Schedule 9.

"***Reset Date***" shall mean the date or dates designated on a Services Schedule when the price for the Services provided and the Service Level Agreements are to be revised through good-faith negotiations, or failing that, in accordance with the Benchmarking Process set out herein, and at which the City may revise the guaranteed minimum volumes (if any) to be provided to Vendor of set forth in the applicable Services Schedule (with any ranges established on such Services Schedule), based upon Vendor performance and future arrangements.

"***Residual Material***" or "***Trash***" means non-recyclable waste such as disposable diapers, animal waste, soiled paper plates, toilet tissue and any other materials that are rendered non-recyclable due to residual contamination as well as Fines. The amount of Residual Material shall be based upon the weight of the Residual Material measured prior to any Disposal. Until the Parties agree on, or the Benchmarking Process shall establish, other measurement systems, use of the then-current material composition ratios to the total volume of Collected Material delivered to Vendor by the City shall constitute measurement.

"***Safety Failure***" means a failure resulting predominantly from an act or omission of the Vendor in performing an obligation under this Agreement or a Service Schedule that any governmental authority (including a relevant municipality, acting in good faith) determines poses a material risk of injury or death to any employee of the City, or any employee of Vendor or a Permitted Subcontractor that is performing Services hereunder for the benefit of the City or an End User.

"***Sales Taxes***" means as set forth in Section 6.9.

"***Scrap Metals***" means a mixture of ferrous and non-ferrous metal consumer products added to the single-stream recyclables from residential sources. Examples of scrap metals include various metal car parts, aluminum window and door frames, metal toys, metal tool implements, etc.

"***Services***" means as set forth in Section 4.1.

"***Service Delivery Manager***" means as set forth in Section 19.2.

SCHEDULE 3.1
DEFINITIONS

"***Service Level***" means the standards for performance, availability, reliability, quality and responsiveness that Vendor will be required to meet in its performance of the Services.

"***Service Level Credits***" means credits to Customer that accrues upon Vendor's failure to meet the applicable Service Level.

"***Service Schedules***" means as set forth in Section 1.1.

"***Services Strategic Plan***" shall have the meaning set forth in Section 19.8.1.

"***Significant Event***" means a circumstance in which an event or discrete set of events has occurred or is planned with respect to the business of the City that results or will result in a significant change in the scope or nature of the Services that will be required from Vendor. Examples of the kinds of events that might cause such significant changes are: (i) changes in the method of the City service delivery; or (ii) changes in the City market priorities; or (iii) a substantial acquisition or divestiture of a substantial portion of the City's population within a twelve (12) month period.

"***SFR***" means single family residential.

"***Steel***" means containers made of tin-coated steel such as cans for food packaging (U.S. EPA 1995c) including food cans, beverage cans, aerosol cans and lids from bottles and jars.

"***Steering Committee***" means as set forth in Section 19.6.

"***Success Criteria***" means as set forth in Section 10.4.

"***Temporary Worker***" shall mean a natural person that is employed, hired, or utilized by Vendor or any Subcontractor with the intent that such person perform any activities that constitute any portion of the Services on a temporary basis and is actually so employed, hired or utilized for less than ten (10) business days in a calendar year. A person that is employed, hired or utilized by Vendor or any Subcontractor on a part time basis but performs activities that constitute any portion of the Services for more than any portion of ten (10) business days in a calendar year shall not be considered to be a Temporary Worker.

"***Term***" means as set forth in Section 5.1.

"***Texas Public Information Act***" means Chapter 522 of the Texas Government Code, as in effect from time to time.

"***Transfer Date***" means as set forth in Section 7.3.

"***Transferred Employees***" means as set forth in Section 7.3.

"***Transition Commencement Date***" means as set forth in Section 5.2.

SCHEDULE 3.1
DEFINITIONS

"***Transition Period***" means as set forth in Section 10.1.

"***Transition Plan***" means as set forth in Section 10.1.

"***Trial***" means as set forth in Section 10.1.

"***Trial Commencement Date***" means as set forth in Section 5.2.

"***Trial Period***" means as set forth in Section 10.1.

"***Used Aluminum Beverage Cans***" or "***UBC***" means beverage containers made of aluminum material.

"***Vendor***" means as set forth in the Preamble.

"***Vendor Intellectual Property***" means as set forth in Section 15.1.

Schedule 6.1
Charges

This Schedule 6.1 shall govern Charges associated with One-Off Services (defined below), Non-Standard Charges for Services subject to a Service Schedule, and most favored nations with respect to Services subject to a Service Schedule. Charges under each Service Schedule shall be at such rates and amounts as set forth in such Service Schedule, or if no such rates and amounts are set forth in the applicable Service Schedule, then according to the provisions of this Schedule 6.1.

Article I. DEFINITIONS

All non-grammatical capitalized terms not defined in this Schedule 6.1 shall have the meaning given such term in the Master Outsourcing Agreement to which this Schedule is attached (the "***Master Agreement***") or, as the case may be, any applicable Service Schedule. References to a section number, unless otherwise qualified, refers to a section of this Schedule 6.1. In addition to the terms defined in the Master Agreement and any Service Schedule, the following terms are used in this Schedule 6.1:

"***Favored Agreement***" shall have the meaning given such term in Section 2.01.

"***One-Off Service***" shall mean a Service to be performed by Vendor which is neither likely to recur with frequency, nor the specific subject of a Service Schedule.

"***Purchase Order***" shall have the meaning given such term in Section 3.03(a).

"***Rates***" shall have the meaning given such term in Section 3.08.

"***Retainage***" shall mean that percentage of final payment withheld by the City until the Service is complete in all respects, with performance satisfactory according to the terms and conditions in the Master Agreement, any applicable Service Schedule or as set forth in a Purchase Order.

Article II. MOST FAVORED NATION

Section 2.01 If Vendor makes any agreement ("***Favored Agreement***") with any third party for a Service that is substantially the same as one which is the subject of a Service Schedule or Purchase Order, and such Favored Agreement contains terms, conditions, cost or revenue which the City contends are more favorable to such third party than as provided in such Service Schedule, Purchase Order or in the Master Agreement, and the provision of the Service in question occurs in whole or material part within 100 miles of the then-existing city limits of the City, then during the calendar year immediately preceding a Reset Date applicable to the Service Schedule in question, the City may request in writing that it also be given the benefit of the same terms or conditions of the Favored Agreement effective as of such upcoming Reset Date. The City shall submit its request to Vendor in writing, together with a revised version of the relevant Service Schedule, Purchase Order or Master Agreement as the City asserts to be comparable to the benefits available under the Favored Agreement. Within thirty (30) days of such written submission, Vendor shall either (i) respond in writing rejecting the submitted revisions and providing its analysis as to why the City's revisions do not result in benefits comparable to those under the Favored Agreement (for example, if there are other terms in the Favored Agreement that are less favorable on a net economic basis to those enjoyed by the City under the existing Service Schedule, Purchase Order or Master Agreement), or (ii) Vendor shall be deemed to have concurred that the

revisions proposed by the City produce benefits comparable to those of the Favored Agreement. In the event the Parties are unable to agree as to what changes will be necessary to the existing Service Schedule, Purchase Order or Master Agreement to provide comparable economic benefits to the City as are provided in the Favored Agreement, then the Parties shall jointly refer the matter to a nationally recognized, disinterested public accounting firm to determine the economic benefits under the Favored Agreement and the revisions necessary to provide comparable benefits under the relevant Service Schedule, Purchase Order or Master Agreement. Once the determination of the disinterested public accounting firm has been delivered to each Party, then at the option of the City exercised with thirty (30) days of such written determination, the terms or conditions necessary to produce benefits comparable to those of the Favored Agreement shall be substituted for those specific relevant terms or conditions of the Master Agreement, Service Schedule or Purchase Order, but such substitution must be made as a whole with respect to the relevant terms, conditions, cost or revenue so that the net economic effect of such substitution shall be substantially the same to Vendor for the provision of the Services to the City as to the third party.

Section 2.02 Unless otherwise provided expressly to the contrary in a Service Schedule, Section 2.01 shall apply to each Service Schedule or Purchase Order executed under the Master Agreement.

Section 2.03 To facilitate the City's rights under this Article II, Vendor shall annually submit to the City a listing of all contracts under which Vendor provides services at its Designated Facility to any thirty party that in whole or substantial part involves Vendor providing services to such third party that are similar to the Services Vendor provides to the City under the Master Agreement (such annual submission required notwithstanding that the City's right for the terms of the Services to be adjusted to be substantially comparable to the economic benefits to the Favored Agreement only to be effective at the time of a Reset Date), any Service Schedule thereto or any Purchase Order. City may upon ten (10) Business Days notice to Vendor, employ at the City's cost and expense an independent auditor not a competitor of Vendor to inspect each such third-party Agreement or audit Vendor's performance and fees thereunder, with Vendor responsible for its own cost in responding to such inspection and audit.

Article III. ONE-OFF SERVICES

Section 3.01 Purchase Order Amount. In consideration for the One-Off Services of Vendor to be performed under an executed (or electronically accepted Purchase Order), Vendor shall be paid under this Schedule 6.1 for fees and expenses as follows:

Section 3.02 Purchase Order Acceptance.

(a) Either Party may propose that Vendor will perform a One-Off Service for the City related to Recyclable Materials or the City's zero waste plan as adopted, amended or modified by the City from time to time.

(b) The party proposing the One-Off Service shall generate a draft Purchase Order which may be in writing or transmitted by fax or other means of electronic transmission. Set forth in such draft Purchase Order, in reasonable detail, shall be the following (if applicable):

(i) the types of Services to be performed,

(ii) the proposed start date,

(iii) a proposed end date,

(iv) a description of the Services,

(v) a description of any standards by which the performance of Vendor is to be measured,

(vi) any Service Level metrics that might apply,

(vii) how any Service Level Credits will be calculated,

(viii) the cost for or revenues to be generated by the Services (which may be calculations based upon time and materials or physical volumes, or a flat fee regardless of time, expenses of vendor or physical volumes, or some combination, such as a not-to-exceed fee),

(ix) the timing of any payments to be made by either the City or the Vendor,

(x) and the relevant contact person at both the City and the Vendor for the One-Off Service in question.

(c) If a draft Purchase Order is submitted by the City, the City shall expressly limit acceptance to the terms of the draft Purchase Order and Vendor shall give notice of objection to any different or additional terms in any response to such offer. If no response is received by the City of Vendor's acceptance of such draft Purchase Order within ten (10) days (or such other deadline as the City shall expressly set forth in the draft Purchase Order), the draft Purchase Order shall be deemed rejected. If Vendor shall propose new terms in writing, then the City's draft Purchase Order shall be deemed rejected, and the City shall retain its rights to use a third party of its own choosing, or to continue negotiating the terms of the One-Off Service with Vendor.

(d) If a draft Purchase Order is submitted by Vendor, the City shall have no less than ten (10) days to accept such draft Purchase Order, or such longer time period as Vendor shall specify. If no response is received by Vendor of the City's acceptance of such draft Purchase Order within such time for acceptance, such draft Purchase Order shall be deemed rejected. Notwithstanding the foregoing, if Vendor transmits the draft Purchase Order to the City in response to a bona fide emergency, City shall respond by Vendor's written deadline if less than ten (10) days or the draft Purchase Order shall be deemed rejected. The City's acceptance of Vendor's draft Purchase Order shall not be binding on the City until expressly accepted by the City, and City shall have generated a conforming Purchase Order with the City's unique Purchase Order number.

Section 3.03 Invoices.

(a) Vendor shall submit separate invoices in duplicate for each Non-Standard Charge or One-Off Service at least monthly (even if payment for a One-Off Service is to be paid less often than monthly or deferred to completion of the One-Off Service).

(b) Invoices shall contain a unique invoice number, the Purchase Order number, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Vendor 's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Vendor's invoice. Invoices received without all required information cannot be processed and will be returned to the Vendor. Invoices shall be itemized and transportation charges, if any are permitted, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department:	
Attention:	
Address:	
City, State, Zip Code:	

(c) Invoices for labor shall include a copy of all timesheets with trade labor rate and a deliverables order number, if any, clearly identified. Invoices shall also include a tabulation of hours worked at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

(d) Unless otherwise expressly authorized in the Master Agreement, the applicable Purchase Order or applicable Service Schedule, the Vendor shall pass through all subcontract and other authorized expenses at actual cost without markup.

(e) Federal excise taxes, state taxes, or city sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

Section 3.04 Payment.

(a) All invoices received by the City in accordance with Section 3.03, above, will be paid within thirty (30) calendar days after the later of (i) delivery and acceptance by City of the Service or Services conforming with the terms of the relevant Service Schedule or Purchase Order, and (ii) City's receipt of the applicable invoice.

(b) If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; provided, that if payment is not timely made for a reason for which the City may withhold payment hereunder, or pursuant to the applicable Purchase Order, under the Master Agreement or any applicable Service Schedule, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

(c) The City may withhold or set off the entire payment or part of any payment otherwise due Vendor to such extent as may be necessary on account of:

(i) third party claims not covered by the insurance which Vendor is required to provide, which are filed, or reasonable evidence indicating probable filing of such claims;

(ii) failure of the Vendor to pay subcontractors for labor, materials or equipment;

(iii) damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by Vendor;

(iv) reasonable evidence that Vendor's obligations will not be completed within the time specified in a Purchase Order or any Service Schedule, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(v) failure of Vendor to submit proper invoices with all required attachments and supporting documentation; or

(vi) failure of Vendor to comply with any material provision of this Schedule 6.1, any applicable Purchase Order, any applicable Service Schedule or the Master Agreement.

(d) Notice is hereby given and Vendor agrees to the provisions of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

(e) Payment will be made by check unless the Parties mutually agree in the relevant Purchase Order to payment by credit card or electronic transfer of funds. Vendor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

(f) If completion dates cannot be met under the applicable Purchase Order for a One-Off Service, Vendor shall inform City immediately. Such notice shall not, however, constitute a change to the completion terms of the relevant Purchase Order unless City modifies such Purchase Order in writing. If any element of the work is not completed by the date specified, the City, at the City's option and without prior notice to Vendor, may either approve a revised date or may cancel the Purchase Order and may obtain such work elsewhere, and in either event Vendor shall be liable to City for any resulting loss incurred by the City. Applicable time frames shall automatically be extended as a result of delays arising from Force Majeure, to the extent not otherwise limited or obviated by the terms of the Master Agreement or the applicable Service Schedule. Vendor's sole remedy for a delay caused by City shall be an extension in the time for Vendor's performance equal to the duration of City's delay. TIMING OF PERFORMANCE OF THE SERVICES IS OF THE ESSENCE WITH RESPECT TO PURCHASE ORDERS.

Section 3.05 Improper Performance and Disputes. In addition to other remedies provided by law, City reserves the right to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Vendor fails to perform any of the work in accordance with the terms and conditions of the Purchase

Order. Any dispute arising in connection with this Purchase Order shall be resolved according to the Master Agreement.

Section 3.06 Retainage. With the exception of any costs Vendor is expressly permitted to pass through to the City (including any markup Vendor is entitled to under the pass-through arrangement), unless a different amount is set forth in the relevant Service Schedule or Purchase Order, the City reserves the right to withhold a ten percent (10%) Retainage until completion of all work under a Purchase Order or Invoice for One-off Services. The Vendor's invoice shall indicate the amount due, less the Retainage. Upon final acceptance of the work, the Vendor shall submit an invoice for the Retainage to the City and payment will be made as specified in this Schedule 6.1. Payment of the Retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Vendor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the relevant Purchase Order.

Section 3.07 No Battle of the Forms; Master Agreement Controls. The City's payment obligations of any Non-Standard Charges or under any Purchase Order remain subject to all terms in this Schedule 6.1, in the Master Agreement, and the relevant Service Schedule, including any right to assert Force Majeure and that payment will only and solely be from funds appropriated and available notwithstanding any inconsistent or contrary terms in the Purchase Order or Vendor's invoice. The absence of appropriated or other lawfully available funds shall render the applicable Purchase Order null and void to the extent funds are not appropriated or available.

Section 3.08 Travel Expenses. All travel, lodging, and per diem expenses in connection with a Purchase Order for which reimbursement may be claimed by the Vendor will be reviewed against the City's Travel Policy and the then-current United States General Services Administration Domestic Per Diem Rates (the "***Rates***") as published and maintained on the Internet at: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC. No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (*e.g.* hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

Article IV. NON-STANDARD CHARGES

Section 4.01 With respect to the payment of Vendor's invoice for any Non-Standard Charges, the provisions of Section 3.03, Section 3.04, Section 3.07, and Section 3.08 of this Schedule 6.1 shall apply to such Non-Standard Charges to the same extent they would apply to One-Off Services, *mutatis mutandis*.

SCHEDULE 7.6.1.1

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NONDISCRIMINATION CERTIFICATION

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4 of the Code of the City of Austin (Discrimination in Employment by City Contractors) requires that at all times while acting as a Vendor (as defined under Chapter 5-4) a Vendor must agree:

(1) Not to engage in any discriminatory employment practice defined in this chapter (including any later amendments or modifications).
(2) To take affirmative action[1] to ensure that applicants are employed and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rate of pay or other form of compensation and selection for training or any other terms, conditions or privileges of employment.
(3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the City setting forth the provisions of this chapter.
(4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Vendor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
(6) To cooperate fully with the City's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to insure that the purpose of the provisions against discriminatory employment practices are being carried out.
(7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with the City subject to the terms of this chapter.

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[1] For the avoidance of doubt, any reference to "affirmative action" in this Schedule 7.6.1.1 does not mean any affirmative action obligation under federal or state law, including but not limited to pursuant to Executive Order 11246, 3 C.F.R. §339 (1964-1965), as amended by Exec. Order No. 11375, 3 C.F.R. §684 (1966-1970), Exec. Order No. 12086, 3 C.F.R. §230 (1978), Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. §793, the Vietnam Era Veterans' Readjustment Act of 1974, 38 U.S.C. §4212 as amended by the Veterans' Employment Opportunities Act of 1998, P.L. 105-339 (1996), the Veterans Benefits and Health Care Improvement Act of 2000 P.L. 106-419 (2000) or other law under or enforced by the Office of Federal Contract Compliance Programs.

SCHEDULE 7.6.1.1

Please check one of the following:

☐ Our firm's nondiscrimination policy conforms to the requirements of City Code, Chapter 5-4-2-B, items (1) through (7) and will be sent to the City upon request.

☑ Our firm does not have an established nondiscrimination policy and will adopt the City's minimum standard shown below. Our firm will send the adopted policy on company letterhead to the City upon request.

Minimum Standard Nondiscrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, ~~the~~ BALCONES RESOURCES Inc. (company name) will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

~~The~~ BALCONES RESOURCES, Inc. (company name) will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting violation of this policy. Furthermore, any employee, supervisor or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

A COPY OF THE FIRM'S NONDISCRIMINATION POLICY WILL BE REQUIRED UPON CONTRACT AWARD.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 of the Municipal Code of the City of Austin may result in sanctions, including termination of the Agreement and suspension or debarment from participation in future City contracts until deemed compliant with this chapter.

SCHEDULE 7.6.1.1

Vendor's Name: BALCONES RESOURCES, INC.

Signature of Officer or Authorized Representative: [signature] Date: 4/27/11

Printed Name: Kerry R. Gelfer

Title CEO

SCHEDULE 7.6.2

If the Parties have designate on a Service Schedule that the City's Living Wage and Health Benefits provision is to apply, then by executing such Service Schedule, Vendor irrevocably agrees that each person engaged in providing Services to the City, whether direct employees of Vendor, or of any of its Permitted Subcontractors, shall be entitled to protections under the following requirements:

1. NON-CIRCUMVENTION OF LIVING WAGE REQUIREMENT. AS SET FORTH IN THIS SCHEDULE 7.6.2, THE VENDOR SHALL AGREE TO ABIDE BY, AND CAUSE EACH PERMITTED SUBCONTRACTOR TO ABIDE BY, THE "LIVING WAGE" REQUIREMENTS SET FORTH IN THIS SCHEDULE, INCLUDING THE PROVISION OF INSURANCE AS SET FORTH HEREIN. VENDOR AGREES, AND SHALL CAUSE EACH PERMITTED SUBCONTRACTOR TO AGREE, THAT IT SHALL NOT USE TEMPORARY WORKERS OR PROBATIONARY WORKERS IN AN ATTEMPT TO CIRCUMVENT SUCH LIVING WAGE AND INSURANCE REQUIREMENTS AND THAT AS MUCH AS IS PRACTICAL, ALL PERSONS PERFORMING ANY ACTIVITIES THAT CONSTITUTE A PORTION OF THE SERVICES SHALL BE REGULAR OR SEASONAL EMPLOYEES OF THE VENDOR OR A PERMITTED SUBCONTRACTOR. IN NO EVENT SHALL MORE THAN FIFTEEN PERCENT (15%) OF THE HOURS USED TO PERFORM THE SERVICES BE PROVIDED BY TEMPORARY WORKERS OR ANY PERSON NOT SUBJECT TO THE CITY'S LIVING WAGE AND INSURANCE REQUIREMENTS, EXCEPT FOR PROBATIONARY WORKERS. FURTHERMORE, VENDOR AGREES NOT TO ENGAGE IN A PRACTICE OF TERMINATING PROBATIONARY WORKERS BEFORE THE EXPIRATION OF THE RELEVANT PROBATION PERIOD IN ORDER TO CIRCUMVENT THE LIVING WAGE REQUIREMENT, OR TO WITHHOLD FROM PROBATIONARY WORKERS INFORMATION REGARDING THEIR ELIGIBILITY TO BE ENTITLED TO THE LIVING WAGE REQUIREMENTS SET FORTH HEREIN UPON THE SUCCESSFUL COMPLETION OF THE RELEVANT PROBATIONARY PERIOD.

2. LIVING WAGES AND BENEFITS (APPLICABLE TO PROCUREMENTS INVOLVING THE USE OF LABOR).

2.2 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum living wage for City employees is $11.00 per hour. This minimum living wage is required for the Vendor's employees (other than Probationary Workers) directly assigned to provide Services under this Agreement. If during the Initial Term or any Extension Period of this Agreement the City shall change, from time to time, the minimum living wage for all City employees, the Vendor shall also comply by changing the minimum living wage for any of its employees directly assigned to provide Services under this Agreement other than Probationary Workers, and causing each Permitted Subcontractor to change the minimum living wage for each of its employees assigned to provide activities that

constitute a portion of the Services, with such change to be effective no later than the end of the month that begins within 30 days of the City's notice of the change in the City's minimum living wage.

2.3 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. The Vendor and Permitted Subcontractors must offer health insurance at reasonable market rates with optional family coverage for the Vendor's employees, other than Probationary Workers, directly assigned to this Agreement. Proof of the health care plan shall be provided prior to the execution of the relevant Service Schedule.

3. CERTIFICATION REQUIRED. The City requires the Vendor and each Permitted Subcontractor to provide a signed certification within five (5) calendar days of contract execution certifying that the employees directly assigned to provide Services under this Agreement other than Probationary Workers will be paid a minimum living wage equal to or greater than $11.00 per hour (or such other minimum living wage rate as established by the City for all of its employees from time to time) and are offered a health care plan (see Schedule 3, Living Wages and Benefits Vendor Certification). The certification shall include a list of all employees directly assigned to providing Services under this Agreement including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Agreement.

4. DOCUMENTS TO BE MAINTAINED. The Vendor shall maintain throughout the term of this Agreement basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

4.2 time and date of week when employee's workweek begins;

4.3 hours worked each day and total hours worked each workweek;

4.4 basis on which employee's wages are paid;

4.5 regular hourly pay rate;

4.6 total daily or weekly straight-time earnings;

4.7 total overtime earnings for the workweek;

4.8 all additions to or deductions from the employee's wages;

4.9 total wages paid each pay period; and

4.10 date of payment and the pay period covered by the payment.

5. PERIODIC CERTIFICATIONS. The Vendor shall provide with the first invoice and as requested by the City's Contract Manager, individual Employee Certifications for all Vendor and Permitted Subcontractor employees directly assigned to provide Services under this Agreement other than Probationary Workers containing the following(see Schedule 7.6.2.5, Living Wages and Benefits Employee Certification):

5.1 the employee's name and job title;

5.2 a statement certifying that the employee is paid at a rate equal to or greater than then-applicable City's minimum living wage established by the City for all of its employees from time to time;

5.3 a statement certifying that the employee has been offered a health care plan with optional family coverage.

6. SIGNATURE. The Vendor and Permitted Subcontractor employee certifications shall be signed by each employee directly assigned to the Agreement.

7. SUBMISSION. Vendor shall submit Vendor and Permitted Subcontractor employee certifications quarterly with the respective invoice to verify that employees are paid the living wage throughout the term of the Agreement.

The City's Contract Manager will periodically review the employee data submitted by the Vendor to verify compliance with this living wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

SCHEDULE 9

This Schedule 9 provides the general terms and conditions to apply with respect to Managed or Assigned Contracts, unless the Parties shall otherwise agree in any relevant Service Schedule. The Parties agree that the specific terms and conditions of this Schedule 9 as applied to a Service Schedule in which Vendor is assuming responsibility for Managed and Assigned Contracts may be negotiated and adjusted as applicable to the specific Managed and Assigned Contracts at the time such Service Schedule is executed. For the avoidance of doubt, until such time as the Parties agree in writing that Vendor will assume responsibility for specific Managed or Assigned Contracts (or an identifiable class of such Contracts), this Schedule 9 shall not apply to any Service Schedule. Schedule 9 is specifically not applicable to SFR Recycling Services, Exhibit A, unless the Parties shall, subsequent to the execution of the Agreement (defined below), expressly agree in writing to the contrary, including the express identification of any such Managed and Assigned Contracts.

This Schedule 9, if applicable under a Service Schedule, shall become a part of the **Master Recycling, Processing and Marketing Services Agreement** (the "***Agreement***") executed as of April 27, 2011 by and between **Balcones Resources, Inc.**, a Texas corporation, ("***Vendor***"), and the City of Austin (the "***City***"). Each non-grammatical capitalized term used herein that is not otherwise defined in this Schedule 9 shall have the meaning given to such term in the Agreement.

1. MANAGED AND ASSIGNED CONTRACTS. If there are any agreements between the City and any third-party suppliers and vendors identified in a Service Schedule that relate to the Services to be provided by Vendor thereunder, other agreements to which the City is a party under which the City receives or provides recycling services, and such other agreements as mutually agreed to by the Parties during each Transition Period (collectively, the "***Managed Contracts***"), then such Managed Contracts shall be managed by Vendor to the extent provided in the Agreement and the applicable Service Schedules. As soon as reasonably practicable following the Acceptance Date, all Managed Contracts under which the City receives or provides in-scope recycling services which are to be the subject of the Services under an applicable Services Schedule (collectively, the "***Assigned Contracts***") shall be assigned to Vendor, and Vendor shall interface with, manage, and become the counterparty of record in lieu of the City, (i.e., Vendor, and not the City, shall be the counterparty of record) with respect to, all Assigned Contracts that are effectively assigned to Vendor. Upon the assignment of any Assigned Contract, Vendor agrees to:

1.1 Credit to the City accounts any revenue earned, service credits or other credits actually received by Vendor from any third-party in connection with such agreement that arise from services provided by or to any such third-party to or from the City.

1.2 Promptly notify the service provider counterparty, or other necessary third-parties, of any service failure or defect upon notification by the City or Vendor's own discovery of such failure or defect.

1.3 Promptly remit to the service provider counterparty or other third-parties all amounts owed by Vendor under such agreement on account of services provided to the City upon receipt of the corresponding Charges from the City.

1.4 Immediately notify the City if Vendor receives a notice of service failure, default, suspension, disconnection, or termination under any such agreement.

1.5 Promptly cure any event of default the occurrence of which was within Vendor's reasonable control that gives rise to a notice of default, termination, suspension or disconnection under (iv) above unless such event of default relates to an act or omission of the City, in which event Vendor shall only give prompt written notice of same to the City.

1.6 Manage third-party vendors under such agreement to the extent necessary to verify that they are operating under the terms of such agreement.

1.7 Manage the relationship with and the provision of services to Customers of the City under such agreement relating to the provision of recycling services to such Customers.

1.8 Interface and coordinate with third-party vendors or subcontractors for the purpose of performing services that are necessary to the City, but that are otherwise not included within the Services.

2. REQUIRED CONSENTS. To the extent that under a Services Schedule, the Vendor is to assume the duties and obligations set out in Section 1 of this Schedule 9 with respect to the Managed Contracts or Assigned Contracts, the City shall use all commercially reasonable efforts to obtain, at its cost and expense, prior to the: (i) applicable Trial Commencement Date, with respect to Managed Contracts, or (ii) Acceptance Date, with respect to the Assigned Contracts, all consents, waivers, and approvals that are set forth in the applicable Service Schedule, including those necessary to assign the Assigned Contracts or to permit Vendor's management of the Managed Contracts (the "***Required Consents***"). Vendor, at its option, may elect not to accept a Managed Contract if required Consents cannot be obtained after reasonable diligence.

3. WORKAROUND. The parties do not intend any provision of the Agreement to require assignment or transfer of any Assigned Contract or other agreement, the assignment or transfer of which is prohibited by Applicable Law or contract. If any such prohibition prevents assignment or transfer of an Assigned Contract or obtaining any Required Consent, the parties shall cooperate reasonably in making alternative arrangements under which the parties achieve comparable risks and results, without causing a breach or violation of any Applicable Law or contract.

4. THIRD PARTY SERVICE PROVIDERS. The City shall use reasonable efforts to cause its relevant departments and third party providers to cooperate and share information with Vendor with regard to Vendor's performance of the Services. Vendor shall use reasonable efforts to cooperate and share information with the City's departments and third party providers in connection with such providers' performance of their obligations to the City. Sharing information pursuant to this Section 4 is subject to confidentiality requirements.

5. NEW CONTRACTS.

5.1 New Contract Criteria. Except to the extent expressly limited in a Service Schedule, Vendor has the right, subject to the City's consent as provided in Section 5.3 of this Schedule 9, to replace any Assigned Contract with a replacement contract or enter into a new contract relating to the performance of the Services (each, a "***New Contract***"; this term includes renewals, modifications, or novations of Assigned Contracts), with such third parties as Vendor deems appropriate, so long as the New Contract:

5.1.1 Does not impose any additional requirements or obligations upon, or reduce the benefits or, if applicable, net effective revenue under the Assigned Contract to, the City without the City's consent.

5.1.2 For contracts whereby the City is solely receiving services, contains service level requirements that are at least comparable to the service level requirements in the Assigned Contract without the City's consent.

5.1.3 For contracts whereby the City is solely receiving services, is not made with a provider ("***Prohibited Provider***") to which the City reasonably objects. To avoid engaging a Prohibited Provider, Vendor shall notify the City at least fourteen (14) days in advance of executing any New Contract of its intention to do so, identifying the proposed replacement provider. The City shall notify Vendor of its objection, and shall provide Vendor

with justification of such objection, to any Prohibited Provider within fourteen (14) days of the City receipt of notice thereof.

Vendor may not replace any Assigned Contract with a New Contract without the City's prior written consent if the Assigned Contract is with a Preferred Provider identified in the applicable Services Schedule, and the New Contract is not with that Preferred Provider.

5.2 Other Requirements for New Contracts. Vendor shall also use all commercially reasonable efforts to ensure that: (i) any New Contract whereby the City receives services includes a clause comparable in form and substance to the clause set forth in Schedule 5.1.1, and (ii) to the extent that Vendor uses the New Contract to acquire goods or services intended for Vendor's other customers as well as the City, the New Contract includes a clause comparable in form and substance to the clause set forth in Schedule 5.1.2. In the event that Vendor enters into a New Contract whereby the City receives services that does not include such clauses, notwithstanding anything in the Agreement to the contrary, the City's sole remedy for such failure shall be the right, at the City's election, not to assume such New Contracts upon the expiration or termination of this Agreement, in either case without any liability to the City with respect to such New Contract. The foregoing shall not relieve the City of its obligation to pay Vendor for Services rendered prior to the expiration or termination of this Agreement, nor shall it relieve the City of its obligation to pay Vendor liquidated damages provided hereunder in the event that the City terminates the Agreement for its convenience or if Vendor terminates the Agreement as a result of the City's breach.

5.3 Consent to New Contracts. Each New Contract which directly affects the Services provided to the City is subject to the City's consent, which consent shall not be unreasonably withheld. Vendor shall provide the City with a copy of the proposed New Contract, with any rate information or other data not required for the City's evaluation redacted. Within ten (10) business days after receipt the City shall notify Vendor of its acceptance or rejection, provided that Vendor represents to the City that the conditions set forth in Sections 5.1.1 and 5.1.2 of this Schedule 9 have been satisfied; otherwise, the City shall provide such notice within thirty (30) days after receipt. If the City rejects a proposed New Contract it shall include a statement of its objections with its notice to Vendor. Vendor shall have a reasonable period of time after receipt of the rejection notice to negotiate with the third party provider to attempt to meet the City objections. Vendor may re-submit a modified proposed New Contract to the City in accordance with this Section 5.3.

5.4 Release of Obligations. Upon execution of a New Contract that replaces, renews, or novates an Assigned Contract, the Assigned Contract shall be terminated without further liability to the City thereunder, and the City shall be relieved of any obligations under the Assigned Contract arising after the effective date of such replacement, renewal, or novation.

6. AGENCY. With respect to all Managed Contracts, the City hereby grants Vendor a limited agency in which Vendor is authorized to act as an agent for the City in certain respects. The scope of any such agency is as set forth in the applicable Service Schedule. The City shall provide Vendor with written evidence of its grant of agency in form and content agreed by the Parties ("***Letters of Agency***") upon the Vendor's request. Any agency, power of attorney, or similar instrument shall terminate automatically upon termination of this Agreement. A Letter of

Agency shall include such agency authority as reasonably necessary for Vendor to provide the Services, including the authority to negotiate more favorable rates, terms, and conditions under the applicable Managed Contract, provided, however, that Vendor shall have no authority to modify, terminate, or cancel any Managed Contract under such agency. Letters of Agency will normally include the following, although each Letter of Agency is subject to the parties' agreement:

6.1 Vendor may place orders for service, discontinue service, change service, analyze and discuss rates and levels of service, analyze and discuss the correction of past and current billing errors, and analyze and discuss the granting of refunds for past billing errors for all orders placed with service providers that are currently under contract to provide services to the City in connection with activities set forth on a Service Schedule, provided that any such orders are made pursuant to the terms of the contract or basic ordering agreement between such service provider and the City.

6.2 The City shall at all times remain the contracting party of record with respect to, and shall remain responsible for compliance with, all contract terms and conditions under the Managed Contracts, unless and until such contracts are assigned to Vendor in accordance with this Agreement. The City shall remain liable for all obligations under such Managed Contracts (including all payment and resource consumption obligations) unless and until the City makes a payment to the Vendor, and the Vendor accepts such payment, to be passed through to the Managed Contracts counterparty, and the City agrees that Vendor shall have no liability to the City for any breach by the third-party provider under such contract.

6.3 Vendor is authorized to analyze and discuss rates and levels of service, to analyze and discuss the correction of past and current billing errors, to analyze and discuss the granting of refunds for past billing errors, and to inquire about and verify any and all information pertaining to the configuration of applicable accounts.

For the duration of the agency under a Letter of Agency, the City acknowledges and agrees that: (a) Vendor is accepting payment for the services received by the City under the Managed Contracts from the City only in Vendor's capacity as the City consultant and agent; and (b) Vendor is not holding itself out as or acting as, and shall not be deemed, a reseller of the services provided under the Managed Contracts. In addition, the grant of agency above shall expire with respect to any contract when such contract terminates. In the event that a Managed Contract terminates prior to the Acceptance Date, the City shall be responsible for replacing any services provided thereunder. In the event that the City enters into a replacement contract for such services, Vendor's and the City's respective obligations will continue with respect to that contract to the same extent as with respect to the replaced contract, provided that if such replacement contract materially expands or reduces Vendor's obligations hereunder, then the parties shall agree to an Equitable Adjustment in accordance with the change process set forth in Section 20.5 of the Agreement.

7. PASS-THROUGH OF SERVICE CREDITS. Vendor shall credit to the City accounts any service credits or other credits actually received from any third-party provider in connection with the Assigned Contracts and New Contracts resulting for the third-party provider's failure to perform under that contract. Nothing in this Section 7 is intended to limit the City's right to

terminate the Agreement to the extent that such rights are expressly granted elsewhere in this Agreement.

8. THE CITY OBLIGATIONS. The City's failure to comply with applicable obligations (other than obligations which effectively obviate the City's protection from liability under its sovereign immunity rights) under all Assigned Contracts and New Contracts shall (i) excuse any failure of Vendor to provide the Services to the extent caused by such failure, and (ii) require the City, to the extent permitted under state law, to indemnify, defend, and hold harmless Vendor for, from, and against any Losses Vendor incurs as a result of such failure when such Loss was not caused, in whole or substantial part, by Vendor's negligence or failure to act (or refrain from acting) in accordance with Vendor's obligations hereunder. Vendor shall promptly notify the City of the failure and its impact upon the Services, and, wherever reasonably possible, provide the City a reasonable opportunity to cure such failure and use reasonable efforts to mitigate the impact upon the Services

9. OTHER PASS-THROUGH OBLIGATIONS. The City acknowledges and agrees that Vendor's indemnity obligations under the Agreement with respect to any Assigned Contract or New Contract are expressly subject to and limited by any limitations on the indemnity obligations of the third party provider contained in such contract, including limitations on the amount of such indemnity or on the period of time for notifying Vendor of a claim, except to the extent the claim results from any act or omission by Vendor.

10. TERMINATION BY THIRD-PARTY SERVICE PROVIDER. The City acknowledges that certain Assigned Contracts and New Contracts may grant the third-party service provider counterparty rights in relation to the termination, suspension, or discontinuance of a Service or necessary component thereto that are not contained in this Agreement, and that any termination of or interruption to a Service as a result of such third party service provider's termination, suspension, or discontinuance of its provision of goods or services under the Assigned Contract or New Contract shall not be deemed a breach by Vendor of the Agreement unless (i) such termination, suspension, or discontinuance is the result of: a material, uncured breach by Vendor of its obligations to such provider, or (ii) Vendor fails within a reasonably prompt period of time to engage a replacement service provider upon any such termination (and in advance of such termination if Vendor has been notified of the termination reasonably in advance); or (iii) Vendor fails to give the City prompt written notice of same.

11. TERMINATION BY VENDOR. Subject to Vendor's obligations with respect to replacing Assigned Contracts or New Contracts under Section 5 above, any Assigned Contract or New Contract may be terminated at Vendor's sole discretion, and for any reason, without the City consent, so long as the City (i) does not experience any material interruption in any Service as a result of such termination, (ii) Vendor shall be responsible for any payments due to the third-party provider under such contract as a result of such termination unless such termination arises from an act or omission by the City (iii) the cost incurred by the Vendor under any replacement contract shall be substantially the same or less than the cost under the terminated contract (unless the City otherwise consents to any cost increase in writing, or expressly consents to Vendor procuring bids specifically for the replacement contract and approves the bid methodology in advance), and (iv) the replacement service provider is not an affiliate of Vendor (unless the City

has provided prior written consent with full disclosure of the relationship between Vendor and the new service provider).

12. QUALIFICATION ON BREACH BY THE CITY. To the extent anything in this Schedule 9 provides Vendor with an indemnity right against the City as a result of the City's breach of its obligations under an Assigned Contract or New Contract, or the City compliance with its obligations under this Schedule 9 constitutes a Predicate Obligation, such indemnity right shall be effective, and the Predicate Obligation shall excuse Vendor's performance, only if Vendor has provided the City with timely notice of the breach and allowed the City a reasonable opportunity to cure such breach.

CLAUSES FOR NEW CONTRACTS

Schedule 5.1.1

[Vendor] may assign this Agreement to a third party, without Contractor's consent, in the event [Vendor] is required by law or by contract to provide the [goods or services] to such third party, subject to the assignee's performance of [Vendor]'s obligations hereunder in respect to [goods or services] acquired by such third party.

Schedule 5.1.2

Contractor acknowledges that [Vendor] intends to resell [re-license] the [goods or services] to third parties (***"[Vendor] Customers"***). In the event that [Vendor] defaults in its obligations to provide the [goods or services] to a [Vendor] Customer or is required by law or contract to assign its agreement to the [Vendor] Customer, Contractor shall provide the [goods or services] directly to the [Vendor] Customer on the same terms and conditions applicable to [Vendor]'s acquisition of the [goods or services] hereunder, subject to the third party's performance of [Vendor]'s obligations hereunder in respect to [goods or services] acquired by the third party. In calculating price or other terms in the event applicable to the third party, the third party may acquire the [goods or services] at the price such [goods or services] would have been provided to [Vendor], taking account of [Vendor]'s aggregate purchases hereunder.

SCHEDULE 20.3
CHANGE PROCESS

A Change Request will be the vehicle for communicating changes to the Service Schedules and related Charges. The Change Request must describe the Change; the rationale for the Change and the effect the Change will have on the Services and the Charges. All such requests will be submitted in writing. Any Change to a Service Schedule may result in a change in the time for providing Services, Deliverables, or Charges.

Changes may NOT be used to modify or amend the terms and conditions set forth in the Agreement.

Reasonable effort will be made by both parties to evaluate, approve or disapprove all Change Requests in a timely manner.

The Changes will be in effect when both parties sign a written Change Approval. The Change Approval will modify and take precedence over any inconsistent terms of the applicable Service Schedule or any previous Change Approval.

The following provides a detailed process to follow if a Change to a Service Schedule is requested.

Change Request

1. Either party may originate a Change Request. To do so, the originating party shall complete the attached form of Change Request, which form describes the information that ordinarily will be included in any Change Request. Any Change Requests originated by the City should be submitted to the Service Delivery Manager and any Change Requests originated by Vendor should be submitted to the Liaison Officer.

Part I – Preliminary Investigation.

2. The Change Request must include the requestor's estimate of the time and other resources needed to investigate the feasibility of the Change. The Service Delivery Manager and Liaison Officer shall promptly review the Change Request and either reject it or authorize further investigation to estimate the time and price for the effort. Such rejection or authorization will be documented on the Change Request and signed by both parties.

3. If authorization for further investigation is granted, it will be assigned to the appropriate individual for estimation. Upon completion of this effort, the Change Request will then be returned to the Service Delivery Manager and Liaison Officer for their review. If the investigation is authorized then both the Service Delivery Manager and Liaison Officer will sign the Change Request, which will constitute approval for the investigation charges. The investigation will determine the effect that the implementation of the Change Request will have on the Service Schedules.

Part 2 - Change Approval and Implementation

4. The results of the investigation will be documented, and the Change Request will be provided to the Service Delivery Manager for review and authorization for implementation.

5. Appropriate funding documentation must be issued prior to the implementation of any Change

6. The Service Delivery Manager and Liaison Officer will review the Change Request and report of the investigation and reject or approve the Change for implementation. If an approved Change is within the authority of the Service Delivery Manager and Liaison Officer, it will then be implemented

7. Change Requests in which the requestor anticipates an Equitable Adjustment must be approved by the authorized representatives of the parties .

[FORMS OF CHANGE REQUEST FOLLOWS ON NEXT PAGE]

SCHEDULE 20.3
CHANGE PROCESS

Form of Change Request –Part I

City of Austin – [Vendor]

[Insert Change Request Name]

Date of Change Request Submission: _____

Effective Date of Change Request: _____

Liaison Officer: _____

Service Delivery Manager: _____

Originator: _____

Number:

Please indicate the type of change requested:
___ Change prompted by a Significant Event
___ Innovation Change
___ Other

Phase I - Investigation of Change Request				
Hours to investigate Change	**Estimate**		**Actual**	
Other resources needed to investigate Change	**Estimate**		**Actual**	
( ) Accept for Investigation **( ) Reject for Investigation**	**Signed:**_____ __[Vendor] Representative _____ City of Austin Representative		**Date**	
Reason for Rejection: (Add attachment if necessary)				
The above estimate will be withdrawn if not accepted by: / /				

SCHEDULE 20.3
CHANGE PROCESS

Form of Change Request – Part II

City of Austin – [Vendor]

[Insert Change Request Name]
Date of Change Request Submission: _____ **Effective Date of Change Request:** _____

Liaison Officer: _____ **Service Delivery Manager:** _____

Originator: _____ **Number:**

Please indicate the type of change requested:
___ Change prompted by a Significant Event
___ Innovation Change
___ Other

OVERVIEW

This document is Change Request No. __ in connection with the Outsourcing Services Agreement by and between The City of Austin, a Texas home-rule municipality, and [Vendor], a _____, dated as of October __, 2010 (as amended, the "***Outsourcing Agreement***") and Exhibit ____ thereto. Unless otherwise expressly provided in this Change Request, capitalized terms defined in the Outsourcing Agreement and such Exhibit shall have the same meanings in this Change Request, and references to sections and schedules are to sections of and schedules to the Outsourcing Agreement.

Changes modify the Service Schedules and related Charges. Changes may NOT be used to modify or amend the terms and conditions set forth in the **Outsourcing Agreement.**

DESCRIPTION OF SERVICES

[Describe the Services to be changed. Include a reference to the existing Service Schedule and, if applicable, other schedules to which the Change Request relates. If possible, include a proposed revision to the applicable Service Schedule.]

DIVISION OF RESPONSIBILITY

[Insert a detailed description of the effect of the Change on the City's Responsibilities, if any, and [Vendor]'s obligation to provide any new Services. Indicate action items for which each party is responsible.]

REQUIRED INVESTMENTS

[Insert a description of any required investments to implement the Change and identify which party shall make the necessary investment. State whether either party will have rights to use the Change or any component thereof outside of the scope of the Outsourcing Agreement/Service Schedule.]

SCHEDULE 20.3
CHANGE PROCESS

IMPACTS

[Insert a statement about the impact of the Change Request to the Outsourcing Agreement and existing Services. A separate list should be developed for assets, employees, contracts and other items and should be included in the appropriate subsection below:]

Charges

[Provide a schedule showing anticipated changes to the charges for current Services and the anticipated Charges for any new Services. Include any new Critical Service Levels or Critical Deliverables related to the Change, or any revisions to existing Critical Service Level or Critical Deliverables standards, and the Credits to which the City will be entitled for Vendor's failure to meet the standards related to such new or revised Critical Service Levels and Critical Deliverables]

Employees

[Insert a list of all employees to be transferred, if any.]

Contracts/Licenses

[Insert a list of all contracts and/or licenses to be transferred.]

Other

[Insert a description of any other impacts of the Change Request, including the impact of the Change Request on other Services provided under the Outsourcing Agreement/Service Schedules. Identify any Assigned Contracts or Managed Contracts. State any action of either party, or a third party, upon which a Change is dependent.]

IMPLEMENTATION SCHEDULE

[Insert here all applicable dates for implementation of the Change, including the beginning and end date of any transition or trial period applicable to the Change and applicable dates for the transfer of assets, transfer of employees, and assignment of contracts. Insert dates for delivery of Services if such dates are different from those detailed in the Service Schedule prior to implementation of the Change Request.]

EQUITABLE ADJUSTMENT

[If the Change is prompted by a Significant Event or is an Innovation Change, insert the terms of any Equitable Adjustment agreed to by the parties with respect to such Change.

[SIGNATURES FOLLOW ON NEXT PAGE]

SCHEDULE 20.3
CHANGE PROCESS

City of Austin:	**[Vendor]:**
By:	By:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

Schedule 22.2 with respect to Exhibit "A" (Service Schedule for SFR Recyclable Materials Processing)
Formula for Liquidated Damages
pursuant to Paragraph 22.2.3 of the Master Recycling, Processing and Marketing Services Agreement (the "Master Agreement")

The following formula is to apply only in the event that the Master Agreement is terminated under circumstances that pursuant to either the Master Agreement or Service Schedule "A" (SFR Recycling Services) the City is expressly responsible to pay the Vendor liquidated damages. Such liquidated damages are not a penalty, the Parties agreeing that actual damages would be difficult to calculate, and liquidated damages are in lieu of any other damages to which Vendor would otherwise be entitled with respect to the termination of the Services under Service Schedule "A," even if such damages were capable of calculation or estimation at the time of termination.

Additional Definitions:
As used in this Schedule, "***Relevant Equipment***" means recycling processing equipment (not to include building systems equipment or life safety equipment such as motorized loading bay doors, HVAC, sprinkler systems or the like) used regularly at the Designated Facility to perform the Services set forth in Service Schedule "A" for the provision of SFR Recycling Services to Collected Material delivered by or for the benefit of the City to the Designated Facility.

Scenario 1: Termination by the City in a manner that triggers a right for the Vendor to be paid liquidated damages, or termination by Vendor for cause other than pursuant to Section 6.6 of the Master Agreement (Appropriations)

Item	Formula
Mobilization and demobilization costs (including costs related to termination of third party agreements)	None
Recovery of unamortized or unrecovered investment ("***RI***")	Until the 15th anniversary after the Cutover Date for SFR Recycling Services, the aggregate amount for all Relevant Equipment calculated on an equipment by equipment basis as (i) the actual cost of the Relevant Equipment in question if purchased by Vendor in the ten (10) years immediately prior to the termination of Agreement (including costs directly and uniquely incurred for the delivery and installation of the Relevant Equipment into the Designated Facility)

	that is used in a regular and systematic basis in the provision of services to the City of Austin ("***C***") x [total tons process for the benefit of the City in the provision of SFR Recycling Services at the Designated Facility during the most recent 3-year period ("***TC***") divided by the total tons processed at the Designated Facility ("***TT***"), each of TC and TD to be calculated by reference to the most recent 3 year period of SFR Recycling Services under the Service Schedule (or actual history if the Agreement is terminated sooner than the 3rd anniversary of the Cutover Date)] x an amortization factor equal to 1 minus [the number of years since the particular piece of equipment was installed at any facility of Vendor ("y") divided by ten (10)]. There is no credit for equipment purchased by Vendor more than ten (10) years prior to the date of termination. After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule. In notation format: $RI=\sum C_n*(TC/TT)*(1-(y_n/10)$; where n refers to a specific piece of equipment
Opportunity and lost opportunity costs	none
Employee-related costs	For terminated Direct Employees whose job responsibility regularly and systematically requires such Direct Employee to perform SFR Recycling Services for the benefit of the City: • the amount of termination compensation actually paid by Vendor for which Vendor is contractually or by operation of law required to pay, plus • reasonable re-training costs for Direct Employees not terminated by Vendor but reassigned into positions requiring reasonably comparable educational levels, plus • additional unemployment insurance costs assessed as a result of unemployment claims directly arising out of and proportionate to the termination of the

	Master Agreement. In no event shall the City be responsible for any of the foregoing employee related costs for the termination of the Master Agreement for officers of the Vendor, persons that provide SFR Recycling Services for the benefit of the City less than twenty percent (20%) of their time, or persons whose functions are primarily to perform overhead activities for Vendor (such as accounting, clerical, finance and design activities for the Vendor).
A portion of anticipated profits from the Master Agreement	Until the 15th anniversary after the Cutover Date for SFR Recycling Services, 5 years of net margin on COA tons calculated by the following method: Average of last 5 years (3 years if actual history is less than 5 years) of sales revenue earned from the sale of Recyclable Materials on behalf of the City less the following direct costs that Vendor incurred in providing the SFR Recycling Services for the City: labor, residual disposal, equipment operating and maintenance, and other direct costs including uniforms, materials and supplies, equipment rental, small tools and welding supplies. After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule.

Scenario 2: Termination by Vendor for cause pursuant to Section 6.6 of the Master Agreement (Appropriations).

Item	Formula
Mobilization and demobilization costs (including costs related to termination of third party agreements).	Actual costs incurred by Vendor for the processing of Collected Materials for the City for the 60 days subsequent to such termination times 1.2, and Vendor shall be entitled to retain all revenues earned from the sale of Recyclable Materials obtained from the Collected Materials delivered by or for the benefit of the City during such 60 day period (but not for Recyclable Materials obtained from Collected Materials delivered prior to such termination).
Recovery of unamortized	Until the 15th anniversary after the Cutover Date

or unrecovered investment ("***RI***")	for SFR Recycling Services, the aggregate amount for all Relevant Equipment calculated on an equipment by equipment basis as (i) the actual cost of the Relevant Equipment in question if purchased by Vendor in the ten (10) years immediately prior to the termination of Agreement (including costs directly and uniquely incurred for the delivery and installation of the Relevant Equipment into the Designated Facility) that is used in a regular and systematic basis in the provision of services to the City of Austin ("***C***") x [total tons process for the benefit of the City in the provision of SFR Recycling Services at the Designated Facility during the most recent 3-year period ("***TC***") divided by the total tons processed at the Designated Facility ("***TT***"), each of TC and TD to be calculated by reference to the most recent 3 year period of SFR Recycling Services under the Service Schedule (or actual history if the Agreement is terminated sooner than the 3rd anniversary of the Cutover Date)] x an amortization factor equal to 1 minus [the number of years since the particular piece of equipment was installed at any facility of Vendor ("y") divided by ten (10)]. There is no credit for equipment purchased by Vendor more than ten (10) years prior to the date of termination. After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule. In notation format: $RI=\sum C_n*(TC/TT)*(1-(y_n/10)$; where n refers to a specific piece of equipment
Opportunity and lost opportunity costs	none
Employee-related costs	For terminated Direct Employees whose job responsibility regularly and systematically requires such Direct Employee to perform SFR Recycling Services for the benefit of the City: • the amount of termination compensation actually paid by Vendor for which Vendor is contractually or by operation of law required to pay, plus

	• reasonable re-training costs for Direct Employees not terminated by Vendor but reassigned into positions requiring reasonably comparable educational levels, plus • additional unemployment insurance costs assessed as a result of unemployment claims directly arising out of and proportionate to the termination of the Master Agreement. In no event shall the City be responsible for any of the foregoing employee related costs for the termination of the Master Agreement for officers of the Vendor, persons that provide SFR Recycling Services for the benefit of the City less than twenty percent (20%) of their time, or persons whose functions are primarily to perform overhead activities for Vendor (such as accounting, clerical, finance and design activities for the Vendor).
A portion of anticipated profits from the Master Agreement	Until the 15th anniversary after the Cutover Date for SFR Recycling Services, 5 years of net margin on COA tons calculated by the following method: Average of last 5 years (3 years if actual history is less than 5 years) of sales revenue earned from the sale of Recyclable Materials on behalf of the City less the following direct costs that Vendor incurred in providing the SFR Recycling Services for the City: labor, residual disposal, equipment operating and maintenance, and other direct costs including uniforms, materials and supplies, equipment rental, small tools and welding supplies. After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule.

SCHEDULE 28
INSURANCE REQUIREMENTS

1. INSURANCE. The following insurance requirements apply.

1.1 General Requirements

1.1.1 The Vendor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement term and during any warranty period.

1.1.2 The Vendor shall provide to the City a certificate of insurance with respect to each required insurance policy as verification of coverages required below prior to contract execution and within fourteen (14) calendar days after any future written request from the City. In addition, the Vendor shall promptly obtain and provide to the City new certificates of insurance (i) annually, (ii) within ten (10) days after the renewal date for any policy, and (iii) within ten (10) days after any replacement or supplemental policy is obtained.

1.1.3 All certificates of insurance must be originals, duly endorsed by an authorized representative of the carrier, and be in such form as the City shall reasonably require.

1.1.4 The Vendor shall not commence work until the required insurance is obtained and has been reviewed by City. The Vendor shall provide the City with an electronic Excel spreadsheet in the form of Exhibit G listing all policies obtained by it in compliance with the requirements set forth in this Schedule 28 and shall send to the City a revised electronic copy of the spreadsheet each time there is a change to the information set forth therein. Approval of insurance by the City shall not relieve or decrease the liability of the Vendor hereunder and shall not be construed to be a limitation of liability on the part of the Vendor.

1.1.5 The Vendor must submit certificates of insurance to the City for each Subcontractor prior to the Subcontractor commencing work on the project.

1.1.6 The Vendor's and all Subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best Financial Strength Rating of B+ or better, and A.M. Best Financial Size Category of VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund and other carriers approved by the City.

1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the contract reference number, the Buyer's name, and the Vendor's email address, and shall be mailed to the following address:

SCHEDULE 28
INSURANCE REQUIREMENTS

Attn: _____
Agreement Ref: Single-Stream Recycling
City Of Austin
Purchasing Office P. 0. Box 1088
Austin, Texas 78767

1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Vendor, shall be considered primary coverage as applicable.

1.1.9 If insurance policies are not written for amounts specified in this Schedule 28, the Vendor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review documents that provide proof of insurance, scope of coverage and all material policy terms, conditions and exclusions and may make any reasonable requests with the consent of the Vendor for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies. The Vendor shall have the right to protect its proprietary information such as gross revenues, equipment, contract pricing, etc.

1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Vendor. The City shall reimburse Vendor for any additional cost incurred due to material changes in the City's insurance requirements from those set forth in this Agreement.

1.1.12 The Vendor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

1.1.13 The Vendor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

1.1.14 The Vendor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

1.2 **Specific Coverage Requirements**. The Vendor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Vendor.

SCHEDULE 28
INSURANCE REQUIREMENTS

1.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are $2,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Contracts related to the project.

1.2.1.2 Independent Contractor's Coverage.

1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

1.2.2 Business Automobile Liability Insurance. The Vendor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $2,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $500,000 bodily injury per person, $2,000,000 bodily injury per occurrence and at least $250,000 property damage liability per accident. The policy shall contain the following endorsements:

1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

1.2.3.1 The Vendor's policy shall apply to the State of Texas.

1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

1.2.4 Environmental Impairment Liability Insurance. with a minimum limit of $2,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of sudden and accidental or non-sudden and accidental pollution arising out of the transportation, storage, or permanent disposal of hazardous and non-hazardous wastes.

1.2.4.1 With respect to sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a treatment, storage and disposal facility must demonstrate financial responsibility for bodily injury and property damage to third parties of at least $2,000,000 per occurrence.

1.2.4.2 With respect to non-sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a surface impoundment, landfill or land treatment facility that is used to manage hazardous wastes must demonstrate financial responsibility for bodily injury and property damage to third parties of at least $2,000,000 per occurrence. The amounts of coverage must be exclusive of legal defense costs.

1.2.5 Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval which will not be unreasonably withheld.

1.2.6 Certificate. The following statement must be shown on the Certificate of Insurance.

The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

BALCONES RESOURCES, INC.
EXHIBIT A
SERVICE SCHEDULE
SFR RECYCLABLE MATERIALS PROCESSING
(Description of Scope of Services and Relevant Terms)

Section 1. Summary of Terms:

(a) Execution Date of this Service Schedule: 4/27/11

(b) Trial Period

(i) Transition Commencement Date: TBD by agreement of the Parties no later than October 31, 2011 based on Vendor's construction schedule.

(ii) Trial Commencement Date: TBD by agreement of the Parties no later than October 31, 2011 based on Vendor's construction schedule.

(c) Anticipated Cutover Date: October 1, 2012

(d) Percentage of Total Collected Material Awarded: 60 %

(e) Minimum Monthly Collected Material Amount: 2,000 short tons

(f) Location of Designated Facility: New BR Facility on Johnny Morris Road

(g) Location of Storage Facility: New BR Facility on Johnny Morris Road

(h) Location of Transition Facility: to be determined by agreement of the parties no later than sixty (60) days after ececution of this Services Schedule.

(i) Backup Facility: to be designated by Vendor.

(j) 1st Reset Date: the third (3rd) anniversary of the Cutover Date

(k) Future Reset Dates: every fifth (5th) anniversary of the 1st Reset Date

(l) Processing Fee Rate per ton delivered until 1st Reset Date: $79.00 per ton for the first 2,000 tons; $75.00 per ton for 2,001 + tons. *See* ATTACHMENT 1

(m) Annual Processing Fee Adjustment: None, but the Processing Fee Rate may be changed at 1st Reset Date, by negotiation.

(n) Percent of Index earned by the City until 1st Reset Date: *See* ATTACHMENT 1

(o) Facility Fee Rate: $5.00 per short ton (2000 pounds) for Collected Material, $1 per short ton for material processed at the Designated Facility obtained from third parties in a single-stream process. *See* ATTACHMENT 1 for additional discussion.

(p) Carbon Offset: BRI shall make available to City the net carbon credits earned from SFR Recycling Services conducted at the Designated Facility proportionate to the amount of Collected Material processed to the total amount of material processed from all sources.

(q) Transferred Employees for SFR Recycling Services: None

(r) Managed Contracts or Assigned Contracts: None. Schedule 9 of the Master Agreement is not applicable to this Service Schedule.

(s) Most Favored Nation provision in Schedule 6.1, Article II of the Master Agreement as applied to this Service Schedule applies to single stream recycling contracts for processing primarily residential materials delivered to the MRF. It does not apply to contracts which include recycling processing and collection as bundled services.

Section 2. Definitions:

All non-grammatical capitalized terms not defined in this Service Schedule shall have the meaning given such term in the Master Outsourcing Agreement dated April 27, 2011 by and between Vendor and City (the "***Master Agreement***"). In addition to the terms defined in the Master Agreement, the following terms are used in this Service Schedule:

"***At Risk Amount***" has the meaning given such term in Schedule 13.1 to the Master Agreement and shall be calculated (as of each Reset Date) as the At Risk Amount agreed to by the parties (or by the Benchmarking Process) prior to the 1st Reset Date, times the then-applicable Minimum Award Amount times the Processing Fee. The At Risk Amount shall not be applicable until on and after the 1st Reset Date.

"***Average Residual Percentage***" means Vendor's quarterly estimate of the average amount of Residual Material contained in the Collected Material. The Average Residual Percentage will be computed as part of the quarterly Composition Study.

"***Award Percent***" means until the first (1st) Reset Date, the percentage of Total Collected Material shown in Section 1(d). At each Reset Date, unless this Service Schedule has expired or been terminated in accordance with its terms, or the Master Agreement has expired or been terminated in accordance with its terms, the Award Percent shall apply until the earlier of (i) the next Reset Date or (ii) the expiration or termination of this Service Schedule.

"***Backup Facility***" means an off-site single-stream MRF that the operator of which will have agreed to process the Collected Materials to substantially the same specifications and with the same limitations as Vendor has agreed to herein, should the Designated Facility ever be unable to process the Collected Materials timely in accordance with the standards set forth herein.

"***Collected Material***" means (i) the material deposited in carts designated by the City to be used solely for the collection of Recyclable Materials at single family residences and collected by the City or its Designated Collection Contractor and delivered to Vendor, and (ii) material deposited by commercial operators in 96 gallon or smaller carts designated by the City to be used solely for the collection of Recyclable Materials by the City or its Designated Collection Contractor using

substantially the same equipment deployed for making collections from single family residents ("***Smaller Business Accounts***") and delivered to Vendor. The parties acknowledge that Collected Material may include Recyclable Material, Residual Material, and Trash.

"***Collection Vehicles***" means the vehicles currently owned and operated by the City or a Designated Collection Contractor used to collect the Collected Material at curb-side of single family residences and from Smaller Business Accounts.

"***Composition Study***" means a quarterly study performed by Vendor at the Designated Facility based upon a reasonable sampling of Collected Materials (the ***"sample"***) and conducted in accordance with good industry practice. The Composition Study will be conducted on a weekend day by processing the sample through the Vendor's MRF, and measuring the quantities of Recyclable Material, Residual Material, and Trash extracted from the sample. The first Composition Study will be conducted no later than the 35th day following the Cutover Date, and thereafter each calendar quarter.

"***Critical Deliverable***" has the meaning given such term in Schedule 13.1 of the Master Agreement.

"***Cutover Date***" has the meaning given such term in Section 10.1 of the Master Agreement, and as of the Schedule Date, is anticipated to be on or about the date shown in Section 1(c).

"***Deliverable Credit***" means the credits that shall be payable by the Vendor to the City in the event the Vendor fails to deliver any of the Critical Deliverables within the time period specified.

"***Designated Facility***" has the meaning given such term in Section 3(a).

"***Designated Collection Contractor***" means any person or entity which the City has identified to Vendor as being an agent or contractor of the City for the purpose of collecting or transporting Recyclable Material from single family residences and Smaller Business Accounts.

"***Disposal***" has the meaning assigned to such term in the Master Agreement.

"***Expert***" has the meaning given such term in Section 5(e).

"***Master Contractor***" means the City when it has contracted with an Other Municipality for the City or its Designated Collection Contractor to conduct curbside or transfer station pickup of Recyclable Materials (which may contain Trash not in excess of the Maximum Trash Percentage) which are then delivered to Vendor (by agreement between the Parties) for SFR Processing Services.

"***Maximum Residual Percentage***" means the largest percentage (by weight) of Residual Material that is extracted from the Collected Material. At each Reset Date, the City and Vendor shall establish a new Maximum Residual Percentage appropriate for the rate structure by mutual agreement or if the parties are unable to agree, then by the Benchmarking Process. The initial Maximum Residual Percentage shall be set by the Vendor and the City in connection with the first Reset Date based on operational results obtained from the first three years of operations. The results of composition studies may also be considered.

"***Maximum Trash Percentage***" means the largest percentage (by weight) of Trash that the Collected Material may contain at the point of delivery to the Vendor. Until the first Reset Date, the Maximum Trash Percentage shall be the amount set by mutual agreement based on the results of the first two composition studies, or if the Parties are unable to agree, then by the Benchmarking Process. At each Reset Date, the City and Vendor shall establish a new Maximum Trash Percentage by mutual agreement or if the Parties are unable to agree, then by the Benchmarking Process.

"***Minimum Award Amount***" means the amount of Collected Material that the City agrees to deliver to the Designated Facility (calculated as a monthly average over any rolling twelve (12) calendar month period after the Cutover Date). For the term running from the Cutover Date to the second Reset Date, the minimum Award Amount is equal to the amount shown in Section 1(e). If the Award Percent established by the City for Vendor as of any Reset Date is less than twenty-five percent (25%) of the Collected Material from and after that Reset Date then Vendor may, upon thirty (30) days written notice to the City, elect to terminate this Service Schedule, provided Vendor delivers such written notice within thirty (30) days after the City has established such Award Percent. In addition, Vendor may elect for the provisions of Schedule 6.1, Article II to not apply in the event that the Award Percent is less than twenty-five percent (25%) without having to otherwise terminate this Service Schedule.

"***MRF***" means a materials recycling facility able to efficiently receive, store, process, and make ready for sale Recyclable Materials.

"***Other Municipality***" shall mean any municipality situated in Travis or surrounding counties for whom the City serves as a Master Contractor.

"***Pool Percentage Available for Allocation***" has the meaning set forth in Schedule 13.1 to the Master Agreement, and shall mean, with respect to each respective Service Level the amount agreed to by the parties (or by the Benchmarking Process, if no agreement). The Pool Percentage Available for Allocation shall not be applicable until on or after the first Reset Date.

"***Processing Fee***" means, subject to the annual true-up process set forth in Section 5(f) of this Service Schedule, the charge to be assessed by Vendor as an all-in fee for receiving, storing, sorting, disposing and marketing all Collected Material delivered to Vendor at its Designated Facility, Storage Facility and Backup Facility (without duplication) and is calculated on a monthly basis by multiplying the rate shown in Section 1(l) of this Services Schedule (or such future rate as is effective as of a Reset Date) times the Collected Material delivered to Vendor such month. A separate fee may be assessed for Sunday access to the Designated Facility as reasonably determined by Vendor commensurate with its added costs.

"***Recyclable Material***" shall, from the Cutover Date until the 1st Reset Date shown in Section 1(j), have the meaning given to such term in the Master Agreement, plus upon 12 month advanced written notice to Vendor, such other class of material as the City has reasonably determined there exists a commercially reasonable market for recycled items in such class and there exists an index or other reasonably reliable measurement of the economic value of such recycled items, including Aseptic Containers and Scrap Metals.

"***Residual Material***" means non-recyclable waste and any other materials that are rendered non-recyclable due to residual contamination as well as Fines. The amount of Residual Material shall be based upon the weight of the Residual Material measured prior to any Disposal. Until the Parties agree on, or the Benchmarking Process shall establish, other measurement systems, use of the then-current material composition ratios to the total volume of Collected Material delivered to Vendor by the City shall constitute measurement. For purposes of this Service Schedule, Trash is not a Residual Material and defined separately.

"***Revenue Percent***" shall, until the 1st Reset Date, have the value assigned to such term in ATTACHMENT 1, and shall generally be the percentage of the Value of Recyclable Material earned by the City each month based upon the total weight of each class of Recyclable Material delivered by the City to Vendor for SFR Processing Services for the month in question as shown on ATTACHMENT 1. ATTACHMENT 1 is made an integral part of this Service Schedule and fully incorporated by reference.

"***Revenue Share Payment***" has the meaning given such term in Section 5(d).

"***Schedule Date***" means the date set forth in Section 1(a) of this Service Schedule.

"***Service Level Credits***" means a credit issued by Vendor to the City due to Vendor's failure after the 1st Reset Date to meet any Service Level.

"***SFR Processing Services***" means the receipt, storage, sorting and processing of Collected Material, and the bundling and making ready for resale, and storing of inventory for resale Recyclable Material delivered by the City or its Designated Collection Contractor to Vendor which was collected in a single-stream process from single family residences and Smaller Business Accounts within the City.

"***Slide Schedule***" means the collection operation by recycling crews when a holiday is observed on a weekday.

"***Smaller Business Accounts***" means a commercial operation that is a customer of the City that uses 96 gallon or smaller carts for solid waste collection services.

"***Storage Facility***" means the storage facility location as shown in Section 1(g), or such other location designated to the City in writing at least thirty (30) days prior to any use of such new facility by Vendor for the provision of the SFR Processing Services.

"***Target Trash Percentage***" means from time to time the average percentage of Trash expected to be contained within all Collected Material during the measurement period as calculated based upon the quarterly Composition Study.

"***TCEQ***" means the Texas Commission on Environmental Quality, an agency of the State of Texas.

"***TDA***" means the Texas Department of Agriculture.

"***Total Collected Material***" means, for each month after the Cutover Date, the amount of Collected Material picked up by the City or its Designated Collection Contractor from single family residences located within the city limits of the City.

"***Trailer***" means a walking floor or tipper transfer trailer.

"***Transition Facility***" means an off-site single-stream MRF that the operator of which will have agreed to process the Collected Materials to substantially the same specifications and with the same limitations as Vendor has agreed to herein, should the Designated Facility not be ready to process the Collected Materials by the Cutover Date. The Transition Facility will be used to conduct the SFR Processing Services until the Designated Facility is completed.

"***Trash***" means, for purposes of this Service Schedule, matter or material contained in the Collected Material that is not Recyclable Material under this Service Schedule, but is nevertheless deposited in collection carts by single family residential customers or Smaller Business Accounts.

"***Value of Recyclable Material***" means the dollar amount determined on a month-by-month basis by multiplying the weight of a particular class of Recyclable Material (as shown in ATTACHMENT 1, as such table may be modified from time to time on a Reset Date or by the addition of additional classes of Recyclable Materials) extracted from the Collected Material during the month in question, times the index set forth in ATTACHMENT 1 opposite such class of Recyclable Material.

Section 3. General Conditions:

(a) Operation of MRF. Vendor shall operate a MRF located at the address set forth in Section 1(f) (the "***Designated Facility***") for the purpose of accepting, sorting and processing Collected Material, and the storing and marketing of Recyclable Material collected by the City of Austin or any Designated Collection Contractor. Except as otherwise permitted below, Vendor shall accept, sort, process, store and ship solely from the Designated Facility. In the event that at any time after the Cutover Date the Designated Facility is unable to accept and store all Collected Material from the City in compliance with Applicable Law, it shall be Vendor's sole responsibility to arrange for storage or off-site processing of all Collected Material and any costs for so doing in excess of the per ton all-in Processing Fee shown in Section 1(l), or as established pursuant to the Benchmarking Process at a Reset Date, shall be borne solely by the Vendor. The location of the Storage Facility is at the address set forth in Section 1(g).

(b) Transition Plan. By the tenth (10^{th}) day after the Transition Commencement Date shown in Section 1(b)(i), Vendor will submit its written Transition Plan to the City, as set forth in Section 10.1 of the Master Agreement. The Vendor is to begin processing a relevant volume of Collected Material during the Trial Period to the Service Levels set forth herein (but the Service Level Credits shall not apply during the Trial Period). Any Deliverable Credits set forth in this Service Schedule shall apply during the Trial Period if the due date for the Critical Deliverable is on or after the Transition Commencement Date.

(c) Business Continuity Plan. By the forty-fifth (45th) day after the Anticipated Cutover Date shown in Section 1(c), Vendor will update its existing Business Continuity Plan, if necessary, to the City's reasonable satisfaction, and shall include in such plans the identification of the Backup Facility if not set forth in Section 1(h). Vendor shall be solely responsible for any additional costs to transfer the Collected Material to the Backup Facility, in the event that Vendor is unable to store the Collected Materials at its Designated Facility in accordance with the requirements of the Master Agreement, until Vendor is able to perform the Services with respect to such Collected Material at its Designated Facility. Vendor shall periodically review and update its Business Continuity Plans as it determines is necessary to ensure uninterrupted Services to the City, shall notify the City whenever such update has occurred and shall permit a representative of the City to review the updated plans at Vendor's offices during regular business hours without prior notice, or in the event of any SFR Processing Services disruption lasting longer than eight (8) hours, then within four (4) hours of notice from the City, regardless of the time of day of such notice. The Business Continuity Plans shall be designed to reasonably mitigate any reasonably foreseeable acts of Force Majeure including those that would be reasonably foreseeable to an experienced operator of a MRF located in the Southwestern United States that could be subject to the weather events and extremes as occur from time to time in Central Texas.

(d) Permits; Inspections. Vendor shall (i) at all times have valid and up-to-date local and state permits, and shall allow the City designated representative access to view and make copies of such permits during regular business hours (designated below), (ii) notify the City designated representative within twenty-four (24) hours of any OSHA inspection or violation, and (iii) permit the City's designated representative access to inspect at least once per month the Designated Facility, the Backup Facility, any storage facility identified in Section 1(g), if applicable, and any other facility used by Vendor in the performance of the Master Agreement.

(e) Trial Success. At the conclusion of the Trial Period, Vendor shall demonstrate that it is ready to begin processing an amount each month equal to 150% of the Minimum Award Amount of Collected Material.

Section 4. Process:

(a) The City or its Designated Collection Contractor collects the Collected Material from its residents and Smaller Business Accounts in a single stream method using trucks on regular routes for curb-side pickup from the carts designated for Recyclable Materials that have previously been distributed to single family residences and Smaller Business Accounts in the City. The material placed in the carts is selected by the residents of the City or Smaller Business Accounts and the collection personnel for the City undertake no quality assurance tests or pre-sorting of such material. As a consequence, a portion of the Collected Material placed in such carts, collected by the City and to be delivered to the MRF will contain Trash, or will have a certain amount of impurities and contamination attached to or intermingled with such Recyclable Material. Title to all Collected Material shall pass to Vendor when tipped from the Collection Vehicles or Trailers onto the tipping floor at any facility under the care, custody or control of the Vendor (including any storage facility, Designated Facility or Backup Facility). Vendor's MRF shall be designed to reasonably identify and to remove any Residual Material from the stream of

Recyclable Material. If no higher and best use is commercially available for the Residual Material, then a Disposal of the Residual Material shall occur; provided that any Disposal at a landfill or other disposal facility shall only be at a landfill or other disposal facility approved by and operating under a current and effective MSWLF permit issued by the TCEQ.

(b) When a load of Collected Material delivered to Vendor contains more than the Maximum Trash Percentage contamination (estimated by Vendor in good faith based upon weight), the Vendor will immediately notify the City and will isolate the load through the next business day for inspection by City and Vendor personnel. If the load is determined to exceed the Maximum Trash Percentage, it will remain in the custody of the Vendor for processing as follows:

(i) If the contaminated load contains more than the Maximum Trash Percentage but is composed of less than 50% trash, then Vendor shall process the load to remove any Recyclable Material but deduct the tonnage of the load from the total figure used for calculation of the Revenue Share Payment to the City.

(ii) If 50% or more of the contaminated load is composed of Trash, then a Disposal of the entire load will occur. Notwithstanding any other provisions of this Service Schedule to the contrary, for any Disposal of a contaminated load pursuant to this Section (4)(b)(ii), the City shall reimburse Vendor for the tipping fee at the disposal facility plus 50% of the then-applicable processing fee as identified in Section 1(l) based on the weight of the contaminated load.

(c) The City or its Designated Collection Contractor shall deliver the Collected Material to the Designated Facility either (a) in the Collection Vehicles or (b) aggregated at another location owned or operated by the City (or a contractor selected solely by the City) and transferred into Trailers and delivered to the Designated Facility in such Trailers. In either case, Vendor shall operate its Designated Facility so that all delivery vehicles used by or for the benefit of the City shall be able to travel from publicly-maintained streets or thoroughfares to the tipping floor of the Designated Facility over all-weather drives with suitable base (underpavement) and top concrete or asphalt pavement with a rated capacity that would permit the delivery of at least ten thousand (10,000) tons per month of Collected Material (plus the weight of the delivery vehicles) across such drives without significant deterioration with normal maintenance routines.

(d) Vendor solely is responsible for the conditions within the Designated Facility and any Storage Facility and shall maintain such facilities in a manner to permit the timely and efficient delivery by City vehicles to the Designated Facility and the sorting, processing, and storage of all Recyclable Material. In addition, Vendor shall ensure that at least one safety spotter is provided during regular business hours at the Designated Facility or any Backup Facility while in use by or for Vendor for SFR Processing Services. The tipping floor and all Collected Material, until all sorting and processing is completed, shall be in an all-weather, covered facility designed to ensure that no such material is degraded by any forces of weather. If it becomes necessary for Vendor to store Recyclable Material outside, then Vendor shall store all such Recyclable Material in appropriate conditions for each category of Recyclable Material so that no appreciable amount of degradation of the Recyclable Material shall occur due to weather.

(e) Hours of Operation:

(i) The City or its Designated Collection Contractor should be able to make deliveries to the Designated Facility and tip all Collected Material at the MRF every weekday (Monday through Friday, except for the holidays listed in subsection (ii), below, in which event, the following Saturday), between the hours of 6:30 am and 7:00 pm.

(ii) The holidays identified below are observed by City recycling collection crews when the holiday falls on a weekday. When a holiday is observed on a weekday, recycling crews will conduct collection operations on a Slide Schedule.

Holiday	**Date Observed**
New Year's Day	January 1
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

Section 5. Fees and Revenue:

(a) Compliance with Federal and State Competition Laws: Vendor recognizes that the City may allocate less than one hundred percent (100%) of the Collected Material to Vendor for SFR Processing Services, and that there may exist a Designated Competitor providing to the City essentially the same or similar services. The parties have also agreed that from and after the 1st Reset Date, the Benchmarking Process may be used, but only after the failure of good-faith negotiations to establish price, revenue and Service Levels with respect to the SFR Processing Services. The parties hereby agree that they intend that the pricing and revenue, as well as any Service Levels and related Service Level Credit rates, shall be established strictly in accordance with federal and state fair competition and anti-trust laws, to the extent applicable to the SFR Processing Services and the parties. As a result, the City may mandate a change in the procedures set forth in this Service Schedule, including this Section 5, to the extent that the City or its inside or outside counsel shall ever determine that the application of the procedures set forth herein would result in a violation of fair competition or anti-trust law. In such event, the parties, or a court of competent jurisdiction in the event the parties are unable to agree, shall amend this Service Schedule to comply with such laws, but only to the minimum extent necessary to ensure compliance with such laws, and in a manner designed to most preserve the intended economic bargain of the parties, including the scope of the SFR Processing Services the City is to receive hereunder.

(b) Processing Costs and Fees:

(i) The Processing Fee shall be charged per short ton (2,000 pounds) of Collected Material actually delivered during the month in question by the City or its Designated Collection Contractor to Vendor's Designated Facility, or its storage facility or Backup Facility (without duplication), in the event that the Designated Facility is not available at the time of such delivery.

(ii) Subject to the annual true-up process set forth in Section 5(f) of this Service Schedule, Vendor shall be entitled to charge the Processing Fee as an all-in fee for the performance of all SFR Processing Services at the rate shown in Section 1(l) until the first Reset Date. Subject to the annual true-up process set forth in Section 5(f) of this Service Schedule, during the period between the first Reset Date and the second Reset Date, the Processing Fee rate that Vendor may charge for processing the Minimum Award Amount is a rate no greater than the sum of (*a*) the rate shown in Section 1(l), plus (*b*) the Shared Cost Adjustment set out in the following subsection 5(b)(iii).

(iii) The Shared Cost Adjustment is fifty percent (50%) of the difference (increase or decrease) between Vendor's average per-short ton costs for performing the SFR Processing Services during the 6-month period ending at the first anniversary of the Cutover Date and Vendor's average per-short ton costs for performing the SFR Processing Services during the 6-month period ending 6 months before the first Reset Date. For the purposes of this paragraph, Vendor's costs for performing the SFR Processing Services are limited to the following costs directly related to Vendor's performance of SFR Processing Services: direct labor payroll costs (excluding adjustment for Living Wage requirements in subsection 5(h)), payroll taxes, and medical benefits; workers compensation insurance costs calculated by using the then-effective rate times the gross pay for employees performing SFR Processing Services (excluding adjustments for Living Wage requirements in subsection 5(h)); fuel costs; electricity costs; equipment repair and maintenance costs, exclusive of vehicles; and costs of Residual Disposal.

(iv) At each Reset Date, the Processing Fee rate shall be re-established based upon the agreement of the parties, or if the parties cannot agree, then through the Benchmarking Process. The parties agree that for the purposes of avoiding any anti-competitive price signaling to any Designated Competitor, and subject to the requirements of state law, including the Texas Public Information Act (Tex. Gov. Code, Chapter 552), neither the City nor Vendor shall make public prior to the finalization of any change in the Processing Fee rate at a Reset Date the amount of the proposed Processing Fee, but the City may take such new Processing Fee rate (whether determined by negotiation or through the Benchmarking Process) into consideration when determining, as of a Reset Date, the Award Percent for Vendor that will be applicable from such Reset Date, forward. Subject to the mutual agreement of the parties, such Processing Fee shall be the only fee, charge, expense or cost to be paid by the City for all Services provided by Vendor with respect to SFR Processing Services.

(v) For the avoidance of doubt, Vendor shall be compensated for the sorting, processing and disposal of all Residuals solely through the Processing Fee charged on Collected Material delivered by the City or its Designated Collection Contractor to Vendor, with no additional disposal fees charged to the City.

(c) Determination of Recyclable Material Quantity: Daily, Vendor shall provide each Collection Vehicle driver upon his or her exit of the Designated Facility a copy of the weight ticket for that Collection Vehicle's delivery of Collected Material delivered for SFR Processing Services. The amount of Recyclable Material shall be determined as follows:

The parties shall rely on a Composition Study. Each Composition Study shall be based upon a reasonable sampling of Collected Materials delivered by the City and any of its Designated Collection Contractors conducted in accordance with good industry practice. Until the 1st Reset Date, such composition studies shall be conducted approximately every 3 months, beginning one (1) month after the Cutover Date, and shall be conducted at the Designated Facility unless the Backup Facility is then the facility at which Vendor is providing most of the SFR Processing Services and it is unlikely that such SFR Processing will return solely to the Designated Facility within the next thirty (30) days. From and after any Reset Date until the next Reset Date, the frequency of such composition studies shall be as the parties mutually agree. Vendor shall reasonably cooperate in each such Composition Study, including providing a safe, all-weather location for Vendor's personnel or designated agent to select random samples in a mutually agreed amount from Collected Material tipped by the City and/or its Designated Collection Contractor (not commingled with material received from any other source, commercial or residential), weigh such samples, and then conduct separation and weighing of the sorted Recyclable Material extracted from the samples and any Residual Material. After the 1st Reset Date, based upon the results of such Composition Study, the parties shall calculate the Target Residual Percentage to be applicable until the next Composition Study. The City shall be permitted to have its personnel observe all aspects of the Composition Study and verify the results obtained therefrom, but shall promptly register with the Composition Study team established by mutual agreement of the City and Vendor any disagreement with the study results before Recyclable Materials are processed at the Designated Facility. Vendor shall make its equipment and personnel reasonably available to conduct the Composition Study at no additional cost, unless the City requests additional studies beyond those specified herein. During the conduct of such Composition Study, the City or its designated agent may take or make video, still photographs or other electronic records of the process for archival purposes.

(d) Revenue Share: Vendor shall compensate the City by paying to the City an amount each month equal to the Revenue Percent set forth in ATTACHMENT 1 times the Value of Recyclable Material derived from the Collected Material delivered by the City to Vendor for such month (the "***Revenue Share Payment***"). The calculation of the Revenue Share Payment shall be made by the Vendor monthly based upon the Value of Recyclable Material extracted from the Collected Material for that month, and such calculation shall be sent to the City by the fifteenth (15th) calendar day of the following month, or such later date as the last index shall be published for the month in question. The calculation of the Revenue Share Payment shall be a simple mathematical equation equal to the sum, for all Recyclable Material classes, of the Value of Recyclable Material for such class (calculated based upon the number of tons of each Recyclable Material class, derived from the most recent Composition Study) for the month in question, times the Revenue Percent (with all tons to be short tons, so that if the applicable index is quoting metric tons, then the index shall be converted to an equivalent value for short tons).

(e) Replacement or New Index; Dispute Resolution. To the extent that either party determines in good faith that any index listed in ATTACHMENT 1 no longer reasonably represents

the market price for the referenced Recyclable Material class, then such party may propose a different index, and shall support its proposal by evidence as to how such different index more closely approximates the market price, from month to month, of the applicable class of Recyclable Material, and demonstrating that the proposed index is published in a manner that makes it equally available to both parties by a source that is unaffiliated with either party. If the other party, in good faith, concurs in such assessment, then the proposed index shall replace the index from the table above in calculating the amount of the Revenue Share Payment to which the City is entitled.

In the event that the parties agree that a bona fide, ready market is developed for the sale of Recyclable Material in classes not then subject to SFR Processing Services, then the parties shall mutually agree upon an index for such new Recyclable Material class, and in such case, Vendor shall no longer be permitted to include any such material in Residual Materials or to make a Disposal of any such Recyclable Material.

In the event that at any time there is no published reasonably acceptable index with respect to any of the items in the table above (as adjusted from time to time by the inclusion of additional Recyclable Material classes), the parties agree to instead select three independent brokers of the referenced Recyclable Material active in the Southwestern region of the United States to provide an estimate of the mid-point of bid/ask quotations for the month in question for such referenced Recyclable Material, and the index used to calculate the Revenue Share Payment to the City shall be the simple arithmetic average of the estimates provided by such independent brokers. In the event a party shall nominate a replacement index for any of the indices listed in the above table (as adjusted from time to time by the inclusion of additional Recyclable Material classes), or shall nominate an index with respect to new classes of Recyclable Materials to be subject to SFR Processing Services, and the other party shall reject such nominated index, then the parties agree that they shall meet and confer in good faith as to an acceptable replacement index or new index, and if unable thereafter to agree, then they shall submit their respective positions to a person designated by the City within 15 days of the rejected index nomination and agreed to by Vendor, with such agreement not be unreasonably withheld or delayed (the "***Expert***"), not as an arbitrator but as an expert in the industry and that if such Expert shall concur with a party as to the appropriate index to use for the referenced Recyclable Material class, then the parties shall each abide by such decision, absent either bad faith on the part of the Expert or manifest error by the Expert. In the event either party shall believe that the decision by such Expert was made in bad faith or by manifest error, such party may bring an action in litigation to prevent the use of such index within thirty (30) days of the Expert's decision. If either party fails to contest the Expert's decision by the filing of a lawsuit in the state courts of Travis County, Texas within such 30-day period, then the Expert's decision shall be deemed accepted by the parties and shall become the index for the referenced Recyclable Material class until there shall be a material change in the marketplace such that it is reasonably likely that the index no longer reasonably represents the market price for the referenced Recyclable Material class. If such litigation is initiated, then the parties agree that the predicate issue for the court with respect to such index shall be whether or not the Expert acted in bad faith or made the decision in manifest error, and only if such finding is found in the affirmative by the court shall the litigation then be concerned with determining what is the appropriate index with respect to the referenced Recyclable Material class.

(f) Annual True-up of Processing Fee: In the event that as of each anniversary of the Cutover Date the City and its Designated Collection Contractors have failed to deliver a monthly average amount (measured in short tons) of Collected Material equal to the Minimum Award Amount, then Vendor shall calculate, invoice the City and be entitled to a payment equal to the difference in short tons between the average amount delivered by or for the City to Vendor for SFR Processing Services and the Minimum Award Amount, times the then-applicable Processing Fee Rate (as determined in accordance with Section 5(b)) times twelve (12).

(g) No Material Breach: The parties agree that if the City fails to deliver at least the percentage of total Collected Material committed to Vendor but is within 5% of the Minimum Award Amount owed to Vendor over such 12-month period, the City will not commit a material breach under the Master Agreement.

(h) Living Wage and Healthcare: Vendor understands that, in order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Vendor shall ensure that $11.00/hour will be paid to those employees performing work under this Service Schedule for their time spent on the City contract. Vendor will also provide an option for health insurance, to the extent required by federal and state law, to employees performing work under this Service Schedule. Pursuant to Paragraph 3.3 of the Master Agreement, this provision takes precedence over Schedule 7.6.2 to the Master Agreement. The Parties agree that Schedule 7.6.2 will not apply to this Service Schedule. The Parties agree that the Living Wage Surcharge identified in ATTACHMENT 1 is a pass-through fee paid by the City to cover Vendor's best estimate of costs for complying with this subsection 5(h). The Living Wage Surcharge shown on ATTACHMENT 1 is subject to quarterly reconciliation based on Vendor's actual costs for complying with the requirements of this subsection 5(h).

Section 6. Metrics and Composition Studies:

(a) Residual Limits. Vendor shall use all reasonable commercially acceptable efforts in the industry to limit the amount of Residual Materials subject to a Disposal so that Recyclable Materials actually recovered from the Collected Material equal one hundred percent (100%) of the percentage of Recyclable Materials indicated by the most recent and agreed upon material Composition Study.

(b) Weighing Procedures; Wait Time. Vendor shall maintain at the Designated Facility in good working order accurately calibrated automated inbound and outbound scales suitable for weighing of both Collection Vehicles and Trailers entering and exiting the Designated Facility in conformance with the TDA certified truck scales. At least one set of scales shall be at an entrance to the Designated Facility. The automated scales shall (i) be capable of printing a ticket with the weight, time and date stamp for each vehicle in question, including a duplicate that shall be given to the driver of the vehicle, (ii) meet the TDA's standards for the determination of quantities, and (iii) be able to determine the quantity of all delivered and sold recyclable materials in accordance with TDA standards. Average wait time during regular business hours (designated above) for City Collection Vehicles from the time of

weigh-in until the time of weigh-out shall be no greater than 12 minutes. Delays caused by factors beyond the reasonable control of Vendor shall be excluded from average Wait Time calculations. Given the volume of Collected Material anticipated to be delivered to the Designated Facility, the City will make its best efforts to ensure that the inbound Collection Vehicles and Trailers time their deliveries so that they do not create unnecessary points of congestion leading into the Designated Facility.

(c) Tipping Floor and Non-sorted Material Storage. Vendor shall ensure that (i) its tipping floor is clean at all times in accordance with industry practices and safety standards, and (ii) has the capacity to store thereon no less than two (2) days of Collected Material delivered from the City or its Designated Collection Contractor, based upon a monthly tonnage of Collected Material delivered to the Designated Facility for the second largest monthly tonnage for the immediately preceding twelve (12) months in an all-weather condition.

(d) Storage of Recyclable Material. All Recyclable Material, once sorted and processed, shall be stored in a manner suitable for the particular kind and grade of such Recyclable Material so that it may efficiently be shipped to or picked up by the purchasers of such Recyclable Material, and so that such Recyclable Material does not experience significant degradation in quality or quantity while being stored prior to sale and delivery.

Section 7. Priority:

With respect to acceptance of material, storage, or processing, the City shall, in all cases, be provided the priority of Vendor compared to material received from any other source so that the City shall experience uninterrupted Services from Vendor and if Vendor's capacity at any time is in any way limited, material received from the City shall be accepted, processed and stored in the manner and conditions set forth herein.

Section 8. Testing and Transition from Existing Service Provider:

(a) No later than thirty (30) days prior to the Trial Commencement Date set forth in Section 1(b)(ii), Vendor shall certify to the City that the MRF at the Designated Facility is substantially complete and ready to commence operations (subject to testing and transition), with a daily throughput capacity of not less than 150% of the Minimum Award Amount of Collected Material divided by twenty-two (22), including but not limited to a certification that (i) all road and parking surfaces necessary to operate the MRF are installed, cured and ready for travel, (ii) all life-safety equipment and systems have been installed and tested, (iii) sufficient automated scales are installed, calibrated and certified by all appropriate government agencies as required by law, (iv) all utilities necessary to operate the MRF are installed, hooked up and all deposits, tests or other requirements of any utility operator have been met, (v) the installer of the equipment is satisfied that the equipment is properly installed, hooked up to any necessary utility service, in a new condition or comprehensively refurbished to original performance specifications, with an adequate supply of consumable materials and spare parts to keep such equipment efficiently operating are on hand and stored in an acceptable manner, and (vi) all approvals (including, if applicable, any certificates of occupancy) necessary to be obtained from any government agency to begin operations at the MRF on a schedule with throughput reasonably able to process all of the City's Collected Material have been obtained.

(b) No later than thirty (30) days after the Trial Commencement Date, Vendor shall commence a testing of the readiness and throughput of its Designated Facility and operating staff. The City may have personnel or a designated agent (not from a competitor of the Vendor) present to observe such testing. The readiness testing shall consist of Vendor, for a minimum of three (3) consecutive days, receiving at its gates and weighing vehicles of the City with no less than 100 tons in the aggregate for each day of the testing period, weighing such vehicles at its automated scales, accepting upon the tipping floor of the MRF the material from such vehicles, and then processing (with only a reasonable level of Residual material as the City's observer shall reasonably determine based upon the composition of the Collected Material delivered to the Designated Facility during the test period) no less than twenty (20) tons per hour, on average, during a five (5) hour period for each day of the testing period. In the event that the MRF shall fail an initial three (3) day testing period, the test shall be repeated under the same requirements until such test is successfully completed. Notwithstanding the foregoing, if the MRF shall fail to pass the three (3) day testing period at least twenty (20) days prior to the anticipated Cutover Date shown in Section 1(c), then Vendor must implement the delivery of the Collected Material to the Storage Facility or Backup Facility, and shall not commence processing Collected Material (except for test purposes) at the MRF on behalf of the City until it has successfully passed a three (3) day testing period, as the City shall reasonably determine. Any costs incurred by the use of the Storage Facility or Backup Facility shall be solely those of the Vendor, as well as any costs of the City paid to any third party for any retesting of the throughput of the Designated Facility necessary as a result of any failed test.

Section 9. Commencement of Operations:

Vendor shall be ready to commence accepting 100% of the Collected Material from the City or its Designated Collection Contractor no later than twenty (20) days prior to the anticipated Cutover Date shown in Section 1(c) (but the City shall not have an obligation to begin deliveries of Collected Material at the Award Percentage until the Cutover Date set forth in the agreed-upon Transition Plan), and shall continue to maintain such readiness condition thereafter throughout the term of the Master Agreement.

Section 10. Assurances:

In the event that Vendor shall fail to meet the deadline set forth above for commencement of operations or materially fail to meet any of the Metrics or other quality or quantity standards set forth in this Service Schedule, the City may in good faith if it has reason to question Vendor's intent or ability to perform, make demand to the Vendor for written and/or financial assurance of the intent to perform, including the posting of a bond as the City in its reasonable discretion shall determine is necessary to protect the City from additional cost or expense it might incur as a result of Vendor's failure, and in such event Vendor may not commence or continue operations on behalf of the City at the MRF until such bond is posted. In the event that the assurance requested is not given within the time specified after demand is made, the City may treat this failure as an anticipatory repudiation of the Master Agreement. Negotiation over amount or form of assurance is not repudiation of the Master Agreement. This right to demand such financial assurances is without prejudice to the City's rights to demand assurance as otherwise provided in herein, and is without prejudice to any other rights or remedies the City may have with respect to any breach of the Master Agreement by Vendor.

Section 11. Deliverables

(a) Deliverable Matrix. The failure of Vendor to perform the Deliverables listed below within the timetable provided shall result in the indicated Deliverable Credits to the City:

Deliverable	Standard	Deliverables Credit
I. Transition Plan Due on or before the 10th day after the Transition Commencement Date.		
a) Late	a) Per day	a) $100
b) Late more than 5 business days	b) Per business day	b) $1,000
c) Late more than 30 business days	c) Per business day	c) $10,000
d) Late more than 60 business days	d) City may terminate	
II. Readiness Testing Due on or before the 20th day before the anticipated Cutover Date.		
a) Late	a) Per day	a) $100
b) Late more than 5 business days	b) Per business day	b) $1,000
c) Late more than 30 business days	c) Per business day	c) $10,000
d) Late more than 60 business days	d) City may terminate	
III. Rolling 3-Year Services Strategic Plan Due on or before the 90th day after the date of the second quarterly composition study and by March 31 of each calendar year thereafter (beginning with 2012).		
a) Late	a) Per day	a) $100
b) Late more than 5 business days	b) Per business day	b) $1,000
c) Late more than 30 business days	c) Per business day	c) $10,000
d) Late more than 60 business days	d) City may terminate	
IV. Initial Business Continuity Plan (in conformance with the requirements of this Service Schedule) Due on or before the 45th day after the Transition Commencement Date, by March 31 of each calendar year (beginning with 2012) either (a) certify that there has been no need to revise the Business Continuity Plan, or (b) deliver a new Business Continuity Plan.		
a) Late	a) Per day	a) $100
b) Late more than 5 business days	b) Per business day	b) $1,000
c) Late more than 30 business days	c) Per business day	c) $10,000
d) Late more than 60 business days	d) City may terminate	

Deliverable	Standard	Deliverables Credit
V. Business Continuity Plan (in conformance with the requirements of this Service Schedule) Due by March 31 of each calendar year (beginning with 2012) either (a) certify that there has been no need to revise the Business Continuity Plan, or (b) deliver a new Business Continuity Plan. a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	 a) Per day b) Per business day c) Per business day d) City may terminate	 a) $100 b) $1,000 c) $10,000
VI. Community Engagement Plan Adjusted annually. a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	 a) Per day b) Per business day c) Per business day d) Per business day	 a) $50 b) $500 c) $1000 d) $10,000

Section 12. Service Levels:

(a) Service Level Process.

(i) Establishment of Service Levels. This Service Schedule will be amended to reflect the establishment of Service Levels by agreement of the Parties not later than the 1st Reset Date.

(ii) Service Level Credits. Subject to subsection 12(a)(i), Service Level Credits shall be implemented in accordance with subsection (c), below, and will apply the month after Service Level Reporting begins.

(iii) Access to Service Levels. Subject to subsection 12(a)(i), Vendor will provide written Service Level Reporting to the City for each month by the 15th calendar day of the following month.

(iv) Modification of Service Levels. Subject to subsection 12(a)(i) the parties may agree to add, delete, or modify Service Level categories and Metrics.

(b) Exceptions to Service Level Requirements. Failure to meet Service Levels will not be deemed to be a failure by Vendor resulting in Service Level Credits or any other penalty with respect to a particular Service Level, if one of the following conditions exist:

(i) The Service Level is missed because of the acts or omissions of the City or its partners, employees, subcontractors, and agents that substantially impaired the ability of Vendor to perform the Processing Services and could not have been prevented by the exercise of due diligence by Vendor consistent with the due diligence that would have been performed by a recycling entity acting within the United States.

(ii) A failure to meet the Service Level occurs that is mutually agreed in writing by a City-designated representative not to be the fault of Vendor.

(iii) City fails to carry out any of its responsibilities hereunder, which are material to Vendor's proper performance of the Processing Services.

(iv) A Force Majeure event occurs, as described in Section 26 of the Master Agreement.

(c) Service Level Credits. The following provisions apply with respect to the issuance of Service Level Credits.

(i) Service Level Credits. In some cases, if Vendor fails to meet Minimum Service Objectives (as defined within a particular Service Level Metric) for any calendar month, or upon the occurrence of a specified event, as set forth in subsection (d), below, for each Service Level Category, Vendor will be required to issue to City Service Level Credits in accordance with the provisions of subsection (d).

(ii) Modifications to Service Levels. If Service Level Credits for a particular Metric are issued for three (3) consecutive months, that Service Level category and Metric shall be reviewed by Vendor and the City to determine whether it should be modified. No modification shall be made without the written mutual agreement of the parties which may be withheld at a party's discretion.

(d) Service Level Matrix. To be completed by the parties prior to the 1st Reset Date. The matrix below is an example of format, solely.

Service Level Metric	**Definition**
Processing time. ("Processing time" shall mean _____ _____	Troubles will be prioritized using Severity Levels. SERVICE OBJECTIVES **Service Objective** **Time** Minimum Service Objective

Service Level Metric	Definition
	Target Service Objective
	METRIC: Minimum Service Objective: The time it takes Vendor to process _____. Target Service Objective: The time to _____ for a month shall be averaged to determine the average Processing Time for that month. MEASUREMENT PROCESS: Processing Time will be [captured]/[measured] using _____. SERVICE LEVEL CREDITS: Severity 1: 50% of _____. Severity 2: Per occurrence- 20% of _____.

Section 13. Piggyback:

(a) Should Other Municipalities in the greater Austin area enter into a contract with the City as a Master Contractor for the provision of SFR Processing Services by the City, Vendor may agree to provide the SFR Processing Services of any Collected Material delivered by the City or its Designated Collection Contractor obtained from such Other Municipalities at the same terms and conditions of the Master Agreement, during the period of time that the Master Agreement is in effect.

(b) Any liability of any Other Municipality created by entering into an agreement directly with Vendor shall be the sole responsibility of the Other Municipality.

Kerry R. Getter, CEO
KG
4/29/11